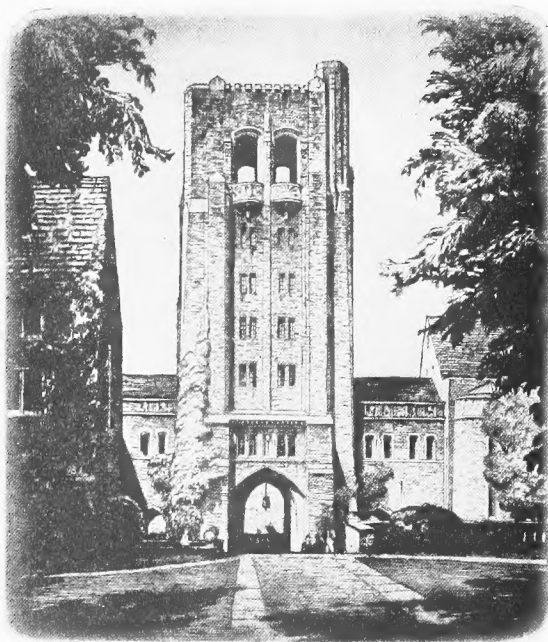


KD
1185
C93
1922

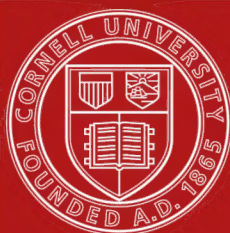


Cornell Law School Library

CORNELL UNIVERSITY LIBRARY



3 1924 064 831 583



Cornell University Library

The original of this book is in
the Cornell University Library.

There are no known copyright restrictions in
the United States on the use of the text.

CRIPPS
ON
COMPENSATION.

SIXTH EDITION.

THE LAW IN THIS EDITION IS STATED AS
AT THE END OF HILARY SITTINGS, 1922.

A TREATISE
ON THE
PRINCIPLES
OF THE
LAW OF COMPENSATION.

Charles
1822
BY
C. A. CRIPPS, M.A., B.C.L.
(Now LORD PARMOOR),

LATE FELLOW OF ST. JOHN'S COLLEGE, OXFORD,
SOMETIME HOLDER OF A FIRST CLASS STUDENTSHIP OF THE FOUR INNS OF COURT,
OF THE MIDDLE TEMPLE, ONE OF HIS MAJESTY'S COUNSEL.

SIXTH EDITION

BY
AUBREY T. LAWRENCE, M.A., &c.,
OF THE INNER TEMPLE, BARRISTER-AT-LAW,
AND
R. STAFFORD CRIPPS,
OF THE MIDDLE TEMPLE, BARRISTER-AT-LAW.

LONDON:
STEVENS AND SONS, LIMITED,
119 & 120, CHANCERY LANE,
Law Publishers.

1922.



PREFACE

TO THE SIXTH EDITION.



THE original scheme of this Treatise, which consisted in the adoption of a logical method of arrangement founded on exposition of principle, has, as far as possible, been preserved, though the large number of Statutes that have been passed since the publication of the Fifth Edition in 1905, has made it necessary to introduce a second book dealing with the numerous modifications of the Lands Clauses Acts which have been enacted. These modifications have been arranged for convenience under the headings of the various subject-matters in connection with which the land is being acquired.

The decisions given by the Courts since the last edition have been carefully noted up and the text modified or rewritten where necessary. A Table of Statutes has been added and all the material portions of the new Statutes are printed in the Appendix, which should now form a practically complete collection of the material portions of all the Statutes dealing with the subject-matter of compensation.

TABLE OF CONTENTS.

	PAGE
TABLE OF CASES	xiii
TABLE OF STATUTES	lxxii

INTRODUCTION	1
--------------------	---

BOOK I.

THE LANDS CLAUSES ACTS.

CHAPTER	
I.—Incorporation of the Lands Clauses Acts.....	3
II.—Definition of lands	8
III.—Lands authorized to be taken:—	
Part I.—General	17
Part II.—Special cases.....	32
1. Lands for extraordinary purposes.....	32
2. Lands for temporary purposes	33
3. Intersected lands—Part of a house, &c.	34
IV.—Promoters and owners.....	47
V.—Purchase of lands by agreement.....	53
VI.—The notice to treat	65
VII.—Entry on lands before purchase	89
VIII.—Compensation for lands purchased	107
IX.—Compensation for lands injuriously affected	142
1. Where no lands are taken	148
2. Where lands injured are held with lands taken	161
X.—Surveyors—Justices	172
1. Surveyors	173
2. Justices	177
XI.—Arbitration	185
XII.—Jury	205
XIII.—Jurisdiction of Assessing Tribunals	221

CHAPTER	PAGE
XIV.—Enforcing an assessment of compensation	228
XV.—Setting aside an assessment of compensation	237
XVI.—Conveyance of lands	244
XVII.—Payment of compensation into Court.....	248
XVIII.—Copyhold lands—Common or waste lands—Lands in mortgage—Rent-charges—Lands subject to leases— Land Tax and Poor's Rate	285
1. Copyhold lands	285
2. Common or waste lands.....	289
3. Lands in mortgage	293
4. Rent-charges, &c.	297
5. Lands subject to leases	298
6. Compensation to taxing authorities	299
XIX.—Superfluous lands	303

BOOK II.

I.—Modifications of the Lands Clauses Acts	315
II.—Acquisition of Land (Assessment of Compensation) Act, 1919	319
III.—Acquisition of land in time of emergency by the Crown	334
IV.—Acquisition of land under the Public Health and Metropolis Management Acts	338
V.—Land taken under the Housing of the Working Classes and Town Planning Acts	354
1. Housing	354
2. Town planning	366
VI.—Agriculture and allied purposes	370
1. Small holdings and allotments	370
2. Economic development of land, &c., and road improvement	375
VII.—Provision of public services by State or local authorities...	378
VIII.—Provision of public services by railway companies and other semi-public or private authorities	382
Railways	383
Light railways	385
Miscellaneous "Clauses Acts"	386

APPENDIX OF STATUTES.

BOOK I.

SECTION	PAGE
I.—Lands Clauses Acts	389
II.—Railways	440
III.—Waterworks	460
IV.—Commons	467
V.—Arbitration	472

BOOK II.

I.—The Acquisition of Land (Assessment of Compensation) Act, 1919, and Rules	478
II.—Emergency powers of the Crown	489
III.—Public Health and Metropolis Management	506
IV.—Housing and Town Planning	531
V.—Agriculture and allied purposes	567
VI.—Provision of public services by State or local authorities ...	600
VII.—Provision of public services by semi-public or private authorities	613

PRECEDENTS

UNDER THE LANDS CLAUSES ACTS.

A. AGREEMENTS.

1. Agreement for sale between an owner and a company	620
2. Agreement for sale in consideration of a rent-charge	621
3. Agreement fixing amount of compensation when lands have been injuriously affected	623

B. NOTICE TO TREAT.

4. Notice to treat	623
5. Form of claim by an owner	625
6. Notice to treat for an easement	626
7. Notice to produce lease under sect. 122 of the L. Cl. Act, 1845	627
8. Notice to yearly tenant requiring possession of lands before the expiration of his tenancy	628
9. Counter-notice by an owner under sect. 92 of the L. Cl. Act, 1845	628
10. Withdrawal of notice to treat by company after receiving a counter-notice	629

C. SURVEYORS.

	PAGE
11. Nomination of two surveyors under sect. 9 of the L. Cl. Act, 1845	629
12. Notice of application to two justices to appoint a surveyor under sect. 9 of the L. Cl. Act, 1845	630
13. Appointment of third surveyor by two justices under sect. 9 of the L. Cl. Act, 1845	630
14. Nomination of a surveyor by two justices under sect. 59 of the L. Cl. Act, 1845	631
15. Appointment of surveyor by two justices under sect. 85 of the L. Cl. Act, 1845	632
16. Notice of intention to apply to Board of Trade to appoint a surveyor under sect. 36 of the Railway Companies Act, 1867	632
17. Appointment of surveyor by Board of Trade under sect. 36 of the Railway Companies Act, 1867	633
18. Declaration of impartiality by a surveyor appointed under sect. 59 or sect. 85 of the L. Cl. Act, 1845	634
19. Declaration of correctness of valuation by a surveyor appointed under sect. 9, sect. 59, or sect. 85 of the L. Cl. Act, 1845 ...	634
20. Valuation by a surveyor	635

D. JUSTICES.

21. Certificate of two justices that capital has been subscribed	635
22. Summons to appear before two justices for assessment of compensation payable to a yearly tenant	636
23. Assessment of compensation by two justices	636
24. Notice to company requiring apportionment of rent	637
25. Summons to apportion rent	638
26. Apportionment of rent by two justices	638

E. ARBITRATION.

27. Claimant's notice of desire to have compensation settled by arbitration under sect. 23 of the L. Cl. Act, 1845	639
28. Demand for arbitration when lands have been injuriously affected	640
29. Appointment of an arbitrator by an owner	640
30. Notice by owner of appointment of arbitrator and request to company to appoint an arbitrator.....	641
31. Appointment of an arbitrator by a company	642
32. Appointment of an arbitrator by a company after receiving notice of appointment by an owner	642
33. Notice by company of appointment of an arbitrator, and request to owner to appoint an arbitrator	643
34. Appointment of arbitrator to act for both parties under sect. 25 of the L. Cl. Act, 1845	643
35. Appointment by agreement of a single arbitrator	644
36. Notice requiring arbitration by owner dissatisfied with valuation of a surveyor under sect. 58 of the L. Cl. Act, 1845 ...	645

	PAGE
37. Appointment of arbitrator by owner dissatisfied with valuation of a surveyor under sect. 58 of the L. Cl. Act, 1845	646
38. Notice to arbitrator to proceed under sect. 30 of the L. Cl. Act, 1845	647
39. Appointment of umpire by arbitrators	647
40. Notice by arbitrators to umpire of failure to agree	648
41. Appointment of an umpire by Board of Trade	648
42. Enlargement of time for making an award	649
43. Form of oath for a witness in an arbitration under the L. Cl. Act, 1845	649
44. Award by two arbitrators	649
45. Award of compensation (including mines) by an umpire	650
46. Award of umpire in form of special case	652

F. JURY.

47. Notice of intention to issue warrant for summoning a jury and offer of compensation	652
48. Warrant to sheriff to summon a jury to determine the value of lands required to be purchased or taken	653
49. Owner's notice under sect. 68 of the L. Cl. Act, 1845, requiring the company to issue their warrant to summon a jury	654
50. Warrant to sheriff where lands have been injuriously affected	655
51. Notice from sheriff of time and place for nomination of a special jury	656
52. Notice from sheriff of time and place for reduction of a special jury	656
53. Notice from the sheriff to the company of time and place of holding inquiry	657
54. Notice by company to owner of time and place for holding an inquiry before a jury	657
55. Inquisition, verdict, and judgment	658

G. PAYMENT OF MONEY INTO COURT.

56. Deed poll under sect. 77 of the L. Cl. Act, 1845, vesting lands in company on failure of owner to make a good title	659
57. Bond with sureties under sect. 85 of the L. Cl. Act, 1845 ...	660

H. MISCELLANEOUS MATTERS.

58. Offer of the right of pre-emption to superfluous lands	662
59. Notice to produce	662
60. Notice to admit	663

INDEX	665
-------------	-----

TABLE OF CASES.

A.

Abe—Arm	PAGE
Aberdare Rail. Co., <i>In re</i> (1860), 8 W. R. 603	100
Abergavenny (Earl of), <i>Ex parte</i> , <i>In re</i> Cuckfield Burial Board (1855), 19 Beav. 153; 24 L. J. Ch. 585; 3 W. R. 142	48
Abraham v. Great Northern Rail. Co. (1851), 16 Q. B. 586; 20 L. J. Q. B. 322; 15 Jur. 855	444
Abrahams v. London (Mayor of) (1868), L. R. 6 Eq. 625; 37 L. J. Ch. 732; 18 L. T. 811	52, 77, 206
Adams v. Catley (1892), 66 L. T. 687; 40 W. R. 570	469
Adams v. London and Blackwall Rail. Co. (1850), 2 Macn. & G. 118; 2 H. & Tw. 285; 19 L. J. Ch. 557; 14 Jur. 679	88, 102
Adderley (Rector of), <i>Ex parte</i> (1864), 10 L. T. 131; 12 W. R. 243..	59
Agar v. Regent's Canal Co. (1814), 1 Swanst. 250 n.	25
Agg-Gardner, <i>In re</i> (1884), 25 Ch. D. 600; 53 L. J. Ch. 347; 49 L. T. 804; 32 W. R. 356	285
Aldis v. London Corporation, [1899] 2 Ch. 169; 68 L. J. Ch. 576; 80 L. T. 683; 47 W. R. 514	352
Aldred's Estate, <i>In re</i> (1882), 21 Ch. D. 228; 51 L. J. Ch. 942; 46 L. T. 379; 30 W. R. 777	255
Alexander v. Crystal Palace Rail. Co. (1862), 30 Beav. 556; 31 L. J. Ch. 500; 8 Jur. N. S. 833	37
Allgood v. Merrybent, &c. Rail. Co. (1886), 33 Ch. D. 571; 55 L. J. Ch. 743; 55 L. T. 835; 35 W. R. 180	62, 102, 230
Allhusen v. Ealing and South Harrow Rail. Co. (1898), 78 L. T. 285, 396; 46 W. R. 483; 14 Times L. R. 307, 349	37
Alston's Estate, <i>Re</i> (1856), 28 L. T. (O. S.) 337; 5 W. R. 189... 273, 274	272, 274
Alston v. Eastern Counties Rail. Co. (1855), 3 W. R. 559; 1 Jur. N. S. 1009	91
Anderson v. Manchester, Sheffield and Lincolnshire Rail. Co., [1898] 2 Ch. 394; 67 L. J. Ch. 568; 78 L. T. 821; 14 Times L. R. 317, 489	125, 156
Anderson v. Wallace (1835), 3 Cl. & F. 26	196
Arden, <i>In re</i> (1894), 70 L. T. 506	278
Arden's (Lord) Estates, <i>In re</i> (1875), L. R. 10 Ch. 445; 24 W. R. 190	253
Armistead (Doe d.) v. North Staffordshire Rail. Co. (1851), 16 Q. B. 526; 20 L. J. Q. B. 249; 15 Jur. 944	18, 21, 22, 101
Armstrong v. Waterford and Limerick Rail. Co. (1846), 10 Ir. Eq. Rep. 60	90

Arn—Att	PAGE
Arnold, <i>Ex parte</i> , <i>In re</i> Battersea Park Acts (1863), 32 Beav. 591; 8 L. T. 623; 9 Jur. N. S. 833; 11 W. R. 793	56
Arnold, <i>Re</i> (1887), W. N. 122	251
Arnold v. Gravesend (Mayor, &c. of) (1856), 25 L. J. Ch. 776; 2 K. & J. 574	59
Artizans', &c. Dwellings Act, <i>In re</i> , <i>Ex parte</i> Jones (1880), 14 Ch. D. 624; 43 L. T. 84	264, 265, 543, 545
Ash v. Great Northern, Piccadilly & Brompton Rail. Co. (1903), 19 Times L. R. 639; 67 J. P. 417	149
Ashbury Railway Carriage Co. v. Riche (1875), L. R. 7 H. L. 653; 44 L. J. Ex. 185; 33 L. T. 451; 24 W. R. 794	30
Ashford v. London, Chatham & Dover Rail. Co. (1866), 14 L. T. 787	98
Ashton Vale Iron Co. v. Bristol Corporation, [1901] 1 Ch. 591; 70 L. J. Ch. 230; 83 L. T. 694; 49 W. R. 295; 17 Times L. R. 183	42, 71, 80, 86
Askew v. Woodhead (1880), 14 Ch. D. 27; 49 L. J. Ch. 320; 42 L. T. 567; 28 W. R. 874	269, 283
Astley v. Manchester, Sheffield & Lincolnshire Rail. Co. (1858), 2 De G. & J. 453; 27 L. J. Ch. 478; 4 Jur. N. S. 567; 31 L. T. (O. S.) 188; 6 W. R. 361	304, 305, 312
Athlone Rifle Range, <i>In re</i> , [1902] 1 Ir. R. 433	83, 141
Atkins' Estate, <i>In re</i> (1875), 1 Ch. D. 82; 45 L. J. Ch. 117; 24 W. R. 39	252
Att.-Gen. v. Barnet and District Gas and Water Co. (1910), 74 J. P. 1, 193; 8 L. G. R. 15, 499; 102 L. T. 546; 54 S. J. 457...25, 27	
Att.-Gen. v. Barry Docks & Rail. Co. (1887), 35 Ch. D. 573; 56 L. J. Ch. 1018; 56 L. T. 559; 35 W. R. 830	46
Att.-Gen. v. De Keyser's Royal Hotel (C. A.), [1919] 2 Ch. 197; 88 L. J. Ch. 415; 120 L. T. 296; 63 S. J. 445; 35 Times L. R. 418; (H. L.) [1920] A. C. 508; 89 L. J. Ch. 417; 122 L. T. 691; 64 S. J. 513; 36 Times L. R. 600	1, 334, 335, 336
Att.-Gen. v. Eastern Counties and Northern & Eastern Counties Rail. Co. (1842), 10 M. & W. 263; 12 L. J. Ex. 106	30
Att.-Gen. v. Edison Telephone Co. of London (1880), 6 Q. B. D. 244; 50 L. J. Q. B. 145; 43 L. T. 697; 29 W. R. 428	378
Att.-Gen. v. Frimley and Farnborough District Water Co., [1908] 1 Ch. 727; 77 L. J. Ch. 442; 98 L. T. 905; 72 J. P. 204; 6 L. G. R. 689; 24 Times L. R. 473	27
Att.-Gen. v. Great Central Rail. Co., [1912] 2 Ch. 110; 81 L. J. Ch. 596; 106 L. T. 413; 76 J. P. 205; 10 L. G. R. 687; 56 S. J. 343; 28 Times L. R. 268	23, 303, 304
Att.-Gen. v. Great Eastern Rail. Co. (1873), L. R. 6 H. L. 367; 7 Ch. 475; 41 L. J. Ch. 505; 26 L. T. 749; 22 W. R. 281	17
Att.-Gen. v. Great Eastern Rail. Co. (1879), 5 App. Cas. 473; 49 L. J. Ch. 545; 42 L. T. 810; 28 W. R. 769	24, 30
Att.-Gen. v. Great Northern Rail. Co. (1850), 4 De G. & Sm. 75; 14 Jur. 684; 15 Jur. 387	46
Att.-Gen. v. Great Northern Rail. Co. (1860), 1 Dr. & S. 154; 2 L. T. 653	46
Att.-Gen. v. Hanwell Urban Council, [1900] 1 Ch. 51; 2 Ch. 377; 69 L. J. Ch. 626; 82 L. T. 778; 48 W. R. 690; 16 Times L. R. 10, 452	24, 138, 304, 507

Att—Bak	PAGE
Att.-Gen. <i>v.</i> London and South Western Rail. Co. (1905), 21 Times L. R. 220; 69 J. P. 110; 3 L. G. R. 1327	23, 304
Att.-Gen. <i>v.</i> Metropolitan Rail. Co., [1894] 1 Q. B. 384; 69 L. T. 811; 42 W. R. 381; 58 J. P. 342	30, 145, 150, 159
Att.-Gen. <i>v.</i> Meyrick, [1893] A. C. 1; 62 L. J. Ch. 313; 68 L. T. 174; 57 J. P. 212	291
Att.-Gen. <i>v.</i> Nottingham Corporation, [1904] 1 Ch. 673; 73 L. J. Ch. 512; 90 L. T. 308; 52 W. R. 281; 68 J. P. 125; 20 Times L. R. 257	32
Att.-Gen. <i>v.</i> Pontypridd U. C., [1906] 2 Ch. 257; 75 L. J. Ch. 578; 95 L. T. 224; 70 J. P. 394; 4 L. G. R. 791; 22 Times L. R. 576	24, 28, 138, 339
Att.-Gen. <i>v.</i> St. John's Hospital, Bath, [1893] 3 Ch. 151; 62 L. J. Ch. 707; 69 L. T. 178; 42 W. R. 172	284
Att.-Gen. <i>v.</i> Sittingbourne & Sheerness Rail. Co. (1865), L. R. 1 Eq. 636; 35 L. J. Ch. 318; 14 L. T. 92; 14 W. R. 414	62
Att.-Gen. <i>v.</i> South Staffordshire Waterworks Co. (1909), 25 Times L. R. 408	27
Att.-Gen. <i>v.</i> Teddington Urban District Council, [1898] 1 Ch. 66; 67 L. J. Ch. 23; 77 L. T. 426; 46 W. R. 88; 61 J. P. 825; 14 Times L. R. 32	24, 138, 304
Att.-Gen. <i>v.</i> Tewkesbury & Malvern Rail. Co. (1863), 32 L. J. Ch. 482; 8 L. T. 682; 9 Jur. N. S. 951; 1 De G. J. & S. 423.....	443
Att.-Gen. <i>v.</i> Widnes Rail. Co. (1874), 22 W. R. 607; 30 L. T. 449...	46
Att.-Gen. of Straits Settlements <i>v.</i> Wemyss (1888), 13 App. Cas. 192; 57 L. J. P. C. 62; 58 L. T. 358	155
Aubrey's Estate, <i>Re</i> (1852), 21 L. T. (O. S.) 192; 17 Jur. 874; 1 W. R. 464	267
Austin <i>v.</i> Amhurst (1878), 7 Ch. D. 689; 47 L. J. Ch. 467; 38 L. T. 217; 26 W. R. 312	291
Australia (Commonwealth) <i>v.</i> Hazeldell, Ltd., [1921] 2 A. C. 373; 90 L. J. P. C. 226	1, 137
Ayr Harbour Trustees <i>v.</i> Oswald (1883), 8 App. Cas. 623...23, 167, 303	

B.

Bache <i>v.</i> Billingham, [1894] 1 Q. B. 107; 63 L. J. M. C. 1; 69 L. T. 648; 42 W. R. 217; 58 J. P. 181	235
Back, <i>Ex parte</i> (1828), 2 Y. & J. (Ex.) 386	252
Baddeley, <i>Ex parte</i> (1848), 5 D. & L. 575; 5 Rail. Cas. 542	210
Badham <i>v.</i> Marris (1882), 52 L. J. Ch. 237, n; 45 L. T. 579 ...11,	358
Bailey (Crawshaw), <i>In re</i> (1852), Bail Ct. Cas. 66	208
Bailey <i>v.</i> Badham (1885), 30 Ch. D. 84; 54 L. J. Ch. 1067; 53 L. T. 13; 33 W. R. 770; 49 J. P. 660	9, 76
Bailey <i>v.</i> Isle of Thanet Light Railways Co., [1900] 1 Q. B. 722; 69 L. J. Q. B. 442; 82 L. T. 713; 48 W. R. 589	111
Baily <i>v.</i> De Crespigny (1868), L. R. 4 Q. B. 180; 38 L. J. Q. B. 98; 19 L. T. 681; 17 W. R. 494	126
Baker <i>v.</i> Holme Cultram U. C. (1915), 85 L. J. K. B. 799; 80 J. P. 241; 14 L. G. R. 209	54

Bak—Bat

PAGE

Baker v. Metropolitan Rail. Co. (1862), 31 Beav. 504; 32 L. J. Ch. 7; 7 L. T. 494; 11 W. R. 18; 9 Jur. N. S. 61	58, 85, 88, 174, 228, 229
Baker v. Moore (1696), 1 Ld. Raym. 491	156
Baker (or Barber) v. Nottingham and Grantham Rail. Co. (1864), 15 C. B. N. S. 726; 33 L. J. C. P. 193; 9 L. T. 829; 12 W. R. 376; 10 Jur. N. S. 260	177, 225, 232, 237
Baker v. St. Marylebone (Vestry of) (1876), 35 L. T. 129; 24 W. R. 848	348
Bala and Festiniog Rail. Co., <i>Ex parte</i> (1883), 25 Ch. D. 168; 53 L. J. Ch. 127; 49 L. T. 777; 32 W. R. 181	251
Ballard v. Tomlinson (1885), 29 Ch. D. 115; 54 L. J. Ch. 454; 52 L. T. 942; 33 W. R. 533; 49 J. P. 692	154
Ballinrobe and Claremorris Light Railway and Kenny, <i>Ex parte</i> , [1913] 1 Ir. R. 519	250
Balls v. Metropolitan Board of Works (1866), L. R. 1 Q. B. 337; 35 L. J. Q. B. 101; 13 L. T. 702; 11 W. R. 360; 14 W. R. 370; 12 Jur. N. S. 183	201, 216
Baltimore Extension Rail. Co., <i>In re</i> , <i>Ex parte</i> Daly, [1895] 1 Ir. R. 169	100, 139, 140
Barber (or Baker) v. Nottingham and Grantham Rail. Co. (1864), 15 C. B. N. S. 726; 33 L. J. C. P. 193; 9 L. T. 829; 12 W. R. 376; 10 Jur. N. S. 260	177, 225, 232, 237
Bareham, <i>Re</i> (1881), 17 Ch. D. 329; 29 W. R. 116	276, 283
Barker v. Metropolitan Rail. Co. (1864), 17 C. B. N. S. 785; 11 L. T. 312; 13 W. R. 82; 10 Jur. N. S. 1127	104, 232
Barker v. North Staffordshire Rail. Co. (1848), 5 Rail. Cas. 401; 12 Jur. 324; 2 De G. & S. 55	42, 86, 94, 194
Barlow v. Ross (1890), 24 Q. B. D. 381; 59 L. J. Q. B. 183; 62 L. T. 552; 38 W. R. 372; 54 J. P. 660	358
Barnard v. Great Western Rail. Co. (1902), 86 L. T. 798; 66 J. P. 568	152
Barnes v. Southsea Rail. Co. (1884), 27 Ch. D. 536; 51 L. T. 762; 32 W. R. 976	37, 38, 41
Barnett v. Eccles Corporation, [1900] 2 Q. B. 423; 69 L. J. Q. B. 834; 83 L. T. 66; 64 J. P. 692; 16 Times L. R. 316, 463	342, 511
Barnett v. Great Eastern Rail. Co. (1868), 16 W. R. 793; 18 L. T. 408	249, 271
Barnsley Canal Co. v. Twibell (1844), 13 L. J. Ch. 434; 7 Beav. 19	454
Barrett, <i>Ex parte</i> (1850), 15 Jur. 3; 19 L. J. Ch. 415	250
Barrington, <i>In re</i> , Gamlen v. Lyon (1886), 33 Ch. D. 523; 56 L. J. Ch. 175; 55 L. T. 87; 35 W. R. 164; 2 Times L. R. 774	258
Barrington's Case (1610), 8 Rep. 138 (a)	1
Barrow-in-Furness Corporation and Rawlinson, <i>In re</i> , [1903] 1 Ch. 339; 72 L. J. Ch. 233; 87 L. T. 724; 51 W. R. 248	51
Bateman's Estate, <i>Re</i> (1852), 21 L. J. Ch. 691	250
Bater and Birkenhead Corporation, <i>In re</i> , [1893] 2 Q. B. 77; 62 L. J. M. C. 107; 69 L. T. 220; 41 W. R. 513; 58 J. P. 7	511
Bates v. Moore (1888), 38 Ch. D. 381; 57 L. J. Ch. 789; 58 L. T. 513; 36 W. R. 586	251
Batson v. London School Board (1903), 67 J. P. 457; 2 L. G. R. 116	28

Bat—Bey**PAGE**

Battersea (St. Mary's) Vestry <i>v.</i> County of London and Brush Provincial Electric Lighting Co., [1899] 1 Ch. 474; 68 L. J. Ch. 238; 80 L. T. 31	72, 506
Baxter <i>v.</i> London County Council (1890), 63 L. T. 767; 55 J. P. 391	183
Baxter <i>v.</i> Midland Rail. Co. (1905), 93 L. T. 538; 69 J. P. 389; 21 Times L. R. 708; (1906), 95 L. T. 538	386
Bayley <i>v.</i> Great Western Rail. Co. (1884), 26 Ch. D. 434; 51 L. T. 337	73, 138, 303, 304, 306, 307
Bear Island Defence Works and Doyle, <i>In re</i> , [1903] 1 Ir. R. 164...	246
Beardmer <i>v.</i> London and North Western Rail. Co. (1849), 1 Macn. & G. 112; 18 L. J. Ch. 432; 5 Rail. Cas. 728; 13 Jur. 327	443
Beauchamp (Earl) <i>v.</i> Great Western Rail. Co. (1868), L. R. 3 Ch. 745; 38 L. J. Ch. 162; 19 L. T. 189; 16 W. R. 1155 ...29, 307, 312	
Beaufort (Duke of) <i>v.</i> Swansea Harbour Trustees (1860), 8 C. B. N. S. 146; 29 L. J. C. P. 241; 6 Jur. N. S. 146	227
Beaufoy, <i>Re</i> (1853), 1 Sm. & Giff. 20; 22 L. J. Ch. 430	269
Beckett <i>v.</i> Midland Rail. Co. (1866-7), L. R. 3 C. P. 82; 1 C. P. 241; 37 L. J. C. P. 11; 35 L. J. C. P. 163; 17 L. T. 499; 16 W. R. 221	155, 158, 159, 224, 234, 235, 242
Beddoes, <i>Ex parte</i> (1855), 2 Sm. & Giff. 466; 24 L. J. Ch. 175 ...	253
Beddow <i>v.</i> Beddow (1878), 9 Ch. D. 89; 47 L. J. Ch. 570172.	189
Bedford (Duke of) <i>v.</i> Dawson (1875), L. R. 20 Eq. 353; 44 L. J. Ch. 549; 33 L. T. 156	14, 92, 152
Bee <i>v.</i> Stafford and Uttoxeter, &c. Rail. Co. (1875), 23 W. R. 868...	293
Belfast and Northern Counties Rail. Co., <i>In Re, Ex parte</i> Gilmore, [1895] 1 Ir. R. 297	246
Bell <i>v.</i> Earl Dudley, [1895] 1 Ch. 182; 64 L. J. Ch. 291; 72 L. T. 14; 43 W. R. 122; 59 J. P. 199	96
Bell <i>v.</i> North Staffordshire Rail. Co. (1879), 4 Q. B. D. 205; 48 L. J. Q. B. 518; 27 W. R. 263	220
Benington <i>v.</i> Metropolitan Board of Works (1885), 54 L. T. 837; 50 J. P. 740	39, 80
Bentinck and London & North Western Rail. Co., <i>In re</i> (1895), 12 Times L. R. 100	49, 244
Bentinck <i>v.</i> Norfolk Estuary Co. (1857), 8 De G. M. & G. 714; 26 L. J. Ch. 404; 3 Jur. N. S. 345; 5 W. R. 327	27
Berkeley's (Earl of) Will, <i>In re</i> (1874), L. R. 10 Ch. 56; 44 L. J. Ch. 3; 31 L. T. 531; 23 W. R. 195	267
Best <i>v.</i> Hamand (1878), 12 Ch. D. 1; 48 L. J. Ch. 503; 27 W. R. 942; 40 L. T. 769	304, 312
Bethlem Hospital, <i>In re</i> (1875), L. R. 19 Eq. 457; 44 L. J. Ch. 406.	253
Bethlehem and Bridewell Hospitals, <i>Re</i> (1885), 30 Ch. D. 541; 54 L. J. Ch. 1143; 53 L. T. 558; 34 W. R. 148	251
Betts <i>v.</i> Great Eastern Rail. Co. (1875), 3 Ex. D. 182; 47 L. J. Ex. 461 (C. A.); (1879), 5 App. Cas. 7, n.; 49 L. J. Ex. 197; 28 W. R. 50; 44 J. P. 282; 42 L. T. 1 (H. L.)	306, 309
Bexley Heath Rail. Co. <i>v.</i> North, [1894] 2 Q. B. 579; 64 L. J. M. C. 17; 71 L. T. 533; 58 J. P. 832 ...83, 162, 179, 180, 183, 187	
Beyfus <i>v.</i> Westminster Corporation (1914), 84 L. J. Ch. 838; 112 L. T. 119; 79 J. P. 111; 13 L. G. R. 40; 59 S. J. 129	351

Bic—Bob	PAGE
Bicester (Churchwardens and Overseers of), <i>Ex parte</i> (1848), 5 Rail. Cas. 702	263
Bidder & North Staffordshire Rail. Co., <i>Re</i> (1879), 4 Q. B. D. 412; 27 W. R. 540; 48 L. J. Q. B. 248; 40 L. T. 801	118, 187, 194
Bigg v. London Corporation (1873), L. R. 15 Eq. 376; 28 L. T. 336.	118, 158
Bilston (Perpetual Curate of), <i>Ex parte</i> (1889), 37 W. R. 460...251, 283	
Binks v. Rokeby (Lord) (1818), 2 Swanst. 222; 19 R. R. 68 ...139, 140	
Binney v. Hammersmith & City Rail. Co. (1863), 8 L. T. 161; 9 Jur. N. S. 773	41
Birch v. Joy (1852), 3 H. L. C. 565	139, 141
Birch v. Vestry of St. Marylebone (1869), 20 L. T. 697; 17 W. R. 1014	74, 81, 352, 507
Bird v. Eggleton (1885), 29 Ch. D. 1012; 54 L. J. Ch. 819; 53 L. T. 87; 33 W. R. 774	309
Bird v. Great Eastern Rail. Co. (1865), 19 C. B. N. S. 268; 34 L. J. C. P. 366; 13 L. T. 365; 13 W. R. 989; 11 Jur. N. S. 782 ...10, 153	
Birkbeck Freehold Land Society, <i>In re</i> (1883), 24 Ch. D. 119; 52 L. J. Ch. 777; 49 L. T. 265; 31 W. R. 716	282
Birkenhead (Mayor, &c. of) v. London & North Western Rail. Co. (1885), 15 Q. B. D. 572; 55 L. J. Q. B. 48; 50 J. P. 84 ...9, 150, 151, 153	
Birmingham Canal Co. v. Cartwright (1879), 11 Ch. D. 421; 48 L. J. Ch. 552; 40 L. T. 784; 28 W. R. 597	136
Birmingham and District Land Co. v. London and North Western Rail. Co. (1887), 36 Ch. D. 650; 57 L. J. Ch. 121; 57 L. T. 185; 36 W. R. 414 (Ch. D.); (1888), 40 Ch. D. 268; 60 L. T. 527 (C. A.)	81, 88, 89, 91, 102, 107, 171
Birmingham and District Land Co. v. London and North Western Rail. Co. (1889), 22 Q. B. D. 435; 58 L. J. Q. B. 587; 60 L. T. 317; 37 W. R. 285	220, 226
Birmingham, Dudley, &c. Banking Co. v. Ross (1888), 38 Ch. D. 295; 57 L. J. Ch. 601; 36 W. R. 914; 59 L. T. 609	130
Birmingham and Oxford Junction Rail. Co. v. R. (1851), 15 Q. B. 635, 647, n.; 20 L. J. Q. B. 304	56, 79, 87, 207
Birmingham, Wolverhampton, &c. Rail. Co., <i>Re</i> (1863), 1 H. & M. 772; 3 N. R. 290	97, 98
Biscoe v. Great Eastern Rail. Co. (1873), L. R. 16 Eq. 636; 21 W. R. 908	149
Bishopsgate Foundation, <i>In re</i> , [1894] 1 Ch. 185; 63 L. J. Ch. 167; 70 L. T. 231; 42 W. R. 199	284
Blackett v. Bates (1865), L. R. 1 Ch. 117; 2 H. & M. 270; 35 L. J. Ch. 324; 12 Jur. N. S. 151; 13 L. T. 656; 14 W. R. 139	228
Blackpool Corporation v. Starr Estate Co., Ltd., [1922] 1 A. C. 27; 19 L. G. R. 721; 38 Times L. R. 79; 66 S. J. 74; 86 J. P. 25; 91 L. J. K. B. 202; 126 L. T. 258...25, 315, 317, 319, 330, 352	
Blantyre (Lord) v. Babbie (1888), 13 App. Cas. 631	164, 167
Blundell v. B. (1904), 74 L. J. K. B. 91; 92 L. T. 53; 21 Times L. R. 143	335
Blyth's Trusts, <i>In re</i> (1873), L. R. 16 Eq. 468; 28 L. T. 890; 21 W. R. 819	263, 277
Bobbett v. South Eastern Rail. Co. (1882), 9 Q. B. D. 424; 51 L. J. Q. B. 161	138, 308

Bog—Bri	PAGE
Bogg v. Midland Rail. Co. (1867), L. R. 4 Eq. 310; 36 L. J. Ch. 440; 16 L. T. 113	221
Bonner v. Great Western Rail. Co. (1883), 24 Ch. D. 1; 48 L. T. 619; 32 W. R. 190; 47 J. P. 580	24, 46, 138, 303
Bostock v. North Staffordshire Rail. Co. (1855), 5 De G. & S. 584; 4 E. & B. 798; 3 Sm. & G. 283; 24 L. J. Q. B. 225	303, 304
Bottomley v. Ambler (1878), 38 L. T. 545; 26 W. R. 566	193
Bourne v. Liverpool (Mayor, &c. of) (1863), 33 L. J. Q. B. 15; 10 Jur. N. S. 125; 8 L. T. 572; 1 N. R. 425	125, 126
Bradby (or Bradley) and Southampton Local Board, <i>In re</i> (1855), 4 E. & B. 1014; 24 L. J. Q. B. 239; 1 Jur. N. S. 778; 3 W. R. 413; 3 O. L. R. 771	344
Bradford Corporation v. Ferrand, [1902] 2 Ch. 655; 71 L. J. Ch. 859; 87 L. T. 388; 51 W. R. 122; 67 J. P. 21	154
Bradford Corporation v. Pickles, [1895] A. O. 587; 64 L. J. Ch. 759; 73 L. T. 353; 44 W. R. 190; 60 J. P. 3	154
Bradford Local Board v. Hopwood (1858), 6 W. R. 818	341, 512
Bradley v. London and North Western Rail. Co. (1850), 5 Ex. 769; 20 L. J. Ex. 3; 1 L. M. & P. 597	191
Bradshaw's Arbitration, <i>Re</i> (1848), 12 Q. B. 562; 17 L. J. Q. B. 362; 12 Jur. 998; 5 Rail. Cas. 527...143, 189, 191, 192, 194, 227, 241	
Bradshaw, <i>Ex parte</i> , <i>In re</i> East and West India Dock Co. (1848), 16 Sim. 174; 17 L. J. Ch. 454; 5 Rail. Cas. 432; 12 Jur. 888...	282
Bradshaw v. Bray U. C., [1907] 1 Ir. R. 152	364
Bradshaw v. Fane (1862), 3 Drew. 534; 9 Jur. N. S. 166; 1 N. R. 159	264
Brandon v. Brandon, <i>Re</i> Brandon's Estate and South Eastern Rail. Co. (1862), 32 L. J. Ch. 20; 2 Dr. & Sm. 162; 9 Jur. N. S. 11; 7 L. T. 499; 11 W. R. 53	280
Brandon v. Brandon (1864), 2 Dr. & Sm. 305; 34 L. J. Ch. 333; 13 W. R. 251; 11 Jur. N. S. 30; 11 L. T. 658	52, 77, 125, 221, 222, 272, 274, 283
Brandram, <i>In re</i> (1883), 25 Ch. D. 366; 53 L. J. Ch. 331; 49 L. T. 558; 32 W. R. 180	250
Brasher's Trusts, <i>Re</i> (1858), 6 W. R. 406	254, 260
Bray v. South Eastern Rail. Co. (1850), 19 L. J. Q. B. 11; 7 D. & L. 307; 14 L. T. (O. S.) 184	215
Bredicot (Rector of), <i>Ex parte</i> (1848), 17 L. J. Ch. 414; 5 Rail. Cas. 209	250
Brewer, <i>In re</i> (1876), 1 Ch. D. 409; 34 L. T. 466; 4 W. R. 465...8, 298	
Bridgend Gas, &c. Co. v. Dunraven (Earl) (1886), 31 Ch. D. 219; 55 L. J. Ch. 91; 53 L. T. 714; 34 W. R. 119	58, 59, 174, 229
Bridges v. Wilts, &c. Rail. Co. (1847), 16 L. J. Ch. 335; 9 L. T. (O. S.) 242; 11 Jur. 315; 4 Rail. Cas. 622	96, 100
Brierley Hill Local Board v. Pearsall (1884), 9 App. Cas. 595; 54 L. J. Q. B. 25; 51 L. T. 577; 33 W. R. 56	107, 148, 221, 222, 225, 226, 233, 340, 341, 344, 348, 510, 512
Bright v. River Plate Construction Co., [1900] 2 Ch. 835; 70 L. J. Ch. 59; 82 L. T. 793; 49 W. R. 132; 64 J. P. 695	188
Brine v. Great Western Rail. Co. (1862), 2 B. & S. 402; 31 L. J. Q. B. 101	149

Bri—Bur	PAGE
Briscoe, <i>Re</i> (1864), 2 De G. J. & S. 249; 10 Jur. N. S. 859	277
Bristol and Exeter Railway Act and Land's Trust, <i>In re</i> (1857), 4 K. & J. 81	274
Bristol Free Grammar School Estates, <i>In re</i> (1878), 47 L. J. Ch. 317	257, 281
Bristol (Governors of the Poor of) <i>v.</i> Bristol (Mayor, &c.) (1887), 18 Q. B. D. 549; 56 L. J. Q. B. 320; 56 L. T. 641; 35 W. R. 619; 51 J. P. 676	301, 302
Broadbent <i>v.</i> Imperial Gas, &c. Co. (1857-9), 7 De G. M. & G. 436; 26 L. J. Ch. 276; 5 W. R. 272; 3 Jur. N. S. 221 (C. A.); 7 H. L. C. 600; 29 L. J. Ch. 377; 5 Jur. N. S. 1319 (H. L.)...7, 148, 149, 234	
Broadwood's Settled Estates, <i>In re</i> (1886), 1 Ch. D. 438; 45 L. J. Ch. 168	259
Broadwood's Trusts, <i>In re</i> (1886), 55 L. J. Ch. 646; 55 L. T. 312.. 251, 252	
Brogden and Llynvi Valley Rail. Co., <i>In re</i> (1861), 9 C. B. N. S. 229; 30 L. J. C. P. 61; 4 L. T. 361	168
Brook <i>v.</i> Manchester, Sheffield and Lincolnshire Rail. Co., [1895] 2 Ch. 571; 64 L. J. Ch. 890; 73 L. T. 205; 43 W. R. 698	39
Brooshooff's Settlement, <i>In re</i> (1889), 42 Ch. D. 250; 58 L. J. Ch. 654; 61 L. T. 320; 37 W. R. 744	276
Brown, <i>Re</i> (1849), 1 Macn. & G. 201	49
Brown, <i>Re</i> (1890), 59 L. J. Ch. 530; 63 L. T. 131; 38 W. R. 529..	262
Brown <i>v.</i> Fenwick (1866), 35 L. J. Ch. 241; 13 L. T. 787; 14 W. R. 257	281
Brown <i>v.</i> North British Rail. Co. (1906), 8 F. 534	306
Brownlow <i>v.</i> Metropolitan Board of Works (1864), 33 L. J. C. P. 233; 12 W. R. 871; 16 C. B. N. S. 546; 8 Jur. N. S. 891; 6 L. T. 187	347
Browse's Trusts, <i>In re</i> (1866), 14 L. T. 37	253
Brumby and Frodingham U. C., <i>In re</i> (1904), 3 L. G. R. 258; 69 J. P. 96	258
Brunskill <i>v.</i> Caird (1873), L. R. 16 Eq. 493; 21 W. R. 943; 43 L. J. Ch. 163	255
Buccleuch (Duke of) <i>v.</i> Metropolitan Board of Works (1868-72), L. R. 5 H. L. 418; 5 Ex. 221; 3 Ex. 306; 41 L. J. Ex. 137; 27 L. T. 1	155, 163, 164, 165, 166, 199, 236, 241, 242
Buck, <i>Ex parte</i> , <i>In re</i> Hampstead and Tottenham Junction Rail. Co. (1863), 33 L. J. Ch. 79; 1 H. & M. 519; 3 N. R. 110; 12 W. R. 100; 9 L. T. 374; 9 Jur. N. S. 1172	245, 246, 299
Buckingham, <i>In re</i> (1876), 2 Ch. D. 690	253
Buckinghamshire Rail. Co., <i>Re</i> (1850), 14 Jur. 1065	256
Burdekin, <i>In re</i> , [1895] 2 Ch. 136; 64 L. J. Ch. 561; 72 L. T. 639; 43 W. R. 534	247
Burges <i>v.</i> Bristol Urban Sanitary Authority (1886), 50 J. P. 455; 2 Times L. R. 719	339, 355, 507
Burgess <i>v.</i> Northwich Local Board (1880), 6 Q. B. D. 264; 44 L. T. 154; 50 L. J. Q. B. 219; 29 W. R. 931; 45 J. P. 236.. 341, 342, 348, 511	
Burkinshaw <i>v.</i> Birmingham and Oxford Rail. Co. (1850), 5 Ex. 475; 20 L. J. Ex. 246; 6 Rail. Cas. 600	104, 209, 232

TABLE OF CASES.

xxi

Bur—Cal

PAGE

Burrup v. London and South Western Rail. Co. (1891), 64 L. T. 112	301, 302
Bush v. Trowbridge Waterworks Co. (1875), L. R. 10 Ch. 459; 19 Eq. 291; 44 L. J. Ch. 235, 645; 33 L. T. 137; 23 W. R. 641	14, 92, 145, 152
Butchers' Co., <i>Re</i> (1885), 53 L. T. 491	255
Butler's Will, <i>In re</i> (1873), L. R. 16 Eq. 479	259
Butler's Will, <i>In re</i> , <i>Ex parte</i> Metropolitan Board of Works (1912), 106 L. T. 673; 56 S. J. 326	281
Butterknowle Colliery Co. v. Bishop Auckland Industrial Co-operative Society, [1906] A. C. 305; 75 L. J. Ch. 541; 94 L. T. 795; 70 J. P. 361; 22 Times L. R. 516	96
Buxton v. North Eastern Rail. Co. (1868), L. R. 3 Q. B. 549; 9 B. & S. 824; 37 L. J. Q. B. 258; 18 L. T. 795; 16 W. R. 1124	450
Bwllfa and Merthyr Dare Collieries and Pontypridd Waterworks Co., <i>In re</i> , [1901] 2 K. B. 798; 70 L. J. K. B. 1041; 85 L. T. 253; 50 W. R. 135; 65 J. P. 691 (K. B. D.); [1903] A. C. 426; 72 L. J. K. B. 805; 89 L. T. 280; 19 Times L. R. 673 (H. L.)	133, 135
Bygrave v. Metropolitan Board of Works (1886), 32 Ch. D. 147; 55 L. J. Ch. 602; 54 L. T. 889; 50 J. P. 788; 2 Times L. R. 422	60, 89, 92, 228, 229
Byles and Ipswich Dock Commissioners, <i>Re</i> (1855), 11 Ex. 464; 25 L. J. Ex. 53	224, 241
Byrom, <i>Re</i> (1859), 7 W. R. 367; 5 Jur. N. S. 261	278
Byron's Charity, <i>In re</i> (1883), 23 Ch. D. 171; 53 L. J. Ch. 152; 48 L. T. 515; 31 W. R. 517	253, 259, 260, 262

C.

Calcraft v. Roebuck (1790), 1 Ves. Jr. 221; 1 R. R. 126	140
Caledonian Rail. Co. v. Colt (1860), 3 Macq. H. L. (Sc.) 833; 3 L. T. 252; 7 Jur. N. S. 475	149
Caledonian Rail. Co. v. Carmichael (1870), L. R. 2 H. L. (Sc.) 56	141, 170
Caledonian Rail. Co. v. Davidson, [1903] A. C. 22; 72 L. J. P. C. 25; 87 L. T. 602	70, 128
Caledonian Rail. Co. v. Glenboig Union Fireclay Co., [1911] A. C. 290; 80 L. J. P. C. 128; 104 L. T. 657; 75 J. P. 377	137, 138
Caledonian Rail. Co. v. Lockhart (1860), 3 Macq. H. L. (Sc.) 808; 3 L. T. 252; 8 W. R. 373; 6 Jur. N. S. 1311	142, 168, 188, 196, 224
Caledonian Rail. Co. v. Ogilvy (1856), 2 Macq. H. L. (Sc.) 229; 7 Jur. N. S. 475	145, 150, 151, 155, 158, 240
Caledonian Rail. Co. v. Sprot (1856), 2 Macq. H. L. (Sc.) 449; 4 W. R. 659; 2 Jur. N. S. 623; 27 L. T. (O. S.) 264	95, 129, 303
Caledonian Rail. Co. v. Turcan, [1898] A. C. 256; 67 L. J. P. C. 69	23, 35, 38, 44, 205, 222, 303
Caledonian Rail. Co. v. Walker's Trustees (1882), 7 App. Cas. 259; 46 L. T. 826; 30 W. R. 569; 46 J. P. 676	147, 150, 155, 156, 158

Cal—Cas	PAGE
Callow v. Flynn (1890), 26 L. R. Ir. 179	228, 230
Calton's Will, <i>In re</i> (1883), 25 Ch. D. 240; 53 L. J. Ch. 329; 49 L. T. 398, 566; 32 W. R. 150, 167	251
Cambrian Rail. Co.'s Scheme, <i>In re</i> (1868), L. R. 3 Ch. 278; 37 L. J. Ch. 409; 15 L. T. 522; 16 W. R. 346	63
Cambridge (Corporation of), <i>Ex parte, In re</i> Eastern Counties Rail. Co. (1848), 6 Hare, 30; 12 Jur. 450; 5 Rail. Cas. 204	254
Cameron v. Charing Cross Rail. Co. (1864), 16 C. B. N. S. 430; 33 L. J. C. P. 313; 10 L. T. 381; 12 W. R. 803; 10 Jur. N. S. 635	75, 186, 235
Cameron v. Charing Cross Rail. Co. (1865), 19 C. B. N. S. 764; 11 Jur. N. S. 282; 12 L. T. 121; 13 W. R. 390	155, 158
Campbell v. Liverpool (Mayor, &c. of) (1870), L. R. 9 Eq. 579; 18 W. R. 422; 21 L. T. 814	222, 226
Canadian Pacific Rail. Co. v. Roy, [1902] A. C. 220; 71 L. J. P. C. 51; 86 L. T. 127; 50 W. R. 415	159
Cann's Estate, <i>Re</i> (1850), 19 L. J. Ch. 376; 15 Jur. 3; 15 L. T. (O. S.) 520	254
Cannings, Ltd. v. Middlesex C. C., <i>In re</i> , [1907] 1 K. B. 51; 76 L. J. K. B. 44; 95 L. T. 766; 71 J. P. 46; 5 L. G. R. 442; 23 Times L. R. 43	203, 386
Canterbury (Archbishop of), <i>Ex parte</i> (1848), 2 De G. & Sm. 365; 12 Jur. 1042; 5 Rail. Cas. 699	263
Canterbury (Dean, &c. of), <i>Ex parte, In re</i> Kent Coast Rail. Co. (1862), 7 L. T. 240; 10 W. R. 505	256
Capell v. Great Western Rail. Co. (1883), 11 Q. B. D. 345; 52 L. J. Q. B. 348; 48 L. T. 505; 31 W. R. 555; 47 J. P. 246	204, 217
Cardiff (Mayor, &c. of) v. Cardiff Water Works Co. (1859), 5 Jur. N. S. 953; 33 L. T. (O. S.) 104	27
Cardiff Rail. Co. v. Taff Vale Rail. Co., [1905] 2 Ch. 289; 74 L. J. Ch. 490; 93 L. T. 239; 53 W. R. 633	21
Cardigan v. Curzon-Howe (1898), 14 Times L. R. 550	258
Cardwell v. Midland Rail. Co. (1904), 20 Times L. R. 364; 21 Times L. R. 22	69
Carey, <i>Ex parte, In re</i> Great Southern and Western Rail. Co. (1847), 10 L. T. (O. S.) 37	272
Carington v. Wycombe Rail. Co. (1868), L. R. 3 Ch. 377; 37 L. J. Ch. 213; 28 L. T. 96; 16 W. R. 494	45, 307, 312, 313
Carlisle (Earl) and Northumberland C. C., <i>In re</i> (1911), 105 L. T. 797; 75 J. P. 539; 10 L. G. R. 50	132, 372
Carney, <i>Re</i> (1872), 20 W. R. 407; 26 L. T. 308	279
Carnochan v. Norwich and Spalding Rail. Co. (1858), 26 Beav. 169. 82	
Carr v. Metropolitan Board of Works (1880), 14 Ch. D. 807; 49 L. J. Ch. 272; 42 L. T. 354	360
Cary-Elwes' Contract, <i>In re</i> , [1906] 2 Ch. 143; 75 L. J. Ch. 571; 94 L. T. 845; 54 W. R. 480; 70 J. P. 345; 4 L. G. R. 838; 22 Times L. R. 511	228, 229, 244
Cassell, <i>Re</i> (1829), 9 B. & C. 624; 4 M. & R. 555; 7 L. T. (O. S.) 329	192
Castle Bytham (Vicar of) and Midland Rail. Co., <i>Ex parte</i> , [1895] 1 Ch. 348; 64 L. J. Ch. 116; 71 L. T. 606; 43 W. R. 156	259

Cat—Chr

PAGE

Catling <i>v.</i> Great Northern Rail. Co. (1869), 18 W. R. 121; 21 L. T. 769	139
Cave, <i>Ex parte</i> (1856), 26 L. T. (O. S.) 176	245
Cedar Rapids Manufacturing and Power Co. <i>v.</i> Lacoste, [1914] A. C. 569; 83 L. J. P. C. 162; 110 L. T. 873; 30 Times L. R. 293	108, 109, 110
Chabot <i>v.</i> Morpeth (Lord) (1850), 15 Q. B. 446; 19 L. J. Q. B. 377; 17 L. J. Q. B. 336; 12 Jur. 1023; 15 L. T. (O. S.) 364 ...	214, 215, 222
Chamber Colliery Co. <i>v.</i> Rochdale Canal Co., [1895] A. C. 564; 64 L. J. Q. B. 645; 73 L. T. 258	128
Chamberlain, <i>Ex parte</i> (1880), 14 Ch. D. 323; 49 L. J. Ch. 354; 42 L. T. 358; 28 W. R. 565	273
Chamberlain <i>v.</i> West End of London, &c. Rail. Co. (1863), 2 B. & S. 605; 32 L. J. Q. B. 173; 8 L. T. 149; 11 W. R. 472; 9 Jur. N. S. 1051	155, 156, 168
Chamberlain's Trusts, <i>Re</i> (1866), 10 S. J. 910	269
Chambers, <i>Ex parte</i> , [1893] 1 Ch. 47; 62 L. J. Ch. 78; 67 L. T. 647; 41 W. R. 170	384
Chambers <i>v.</i> Goldthorpe, [1901] 1 K. B. 624; 70 L. J. K. B. 482; 84 L. T. 444; 49 W. R. 401	199
Chambers <i>v.</i> London, Chatham and Dover Rail. Co. (1863), 8 L. T. 235; 11 W. R. 479	38
Chandler's Wiltshire Brewery Co. and London County Council, <i>In re</i> , [1903] 1 K. B. 569; 72 L. J. K. B. 250; 88 L. T. 271; 51 W. R. 573; 67 J. P. 119; 1 L. G. R. 269; 19 Times L. R. 268	125, 356, 359
Chapman <i>v.</i> Monmouthshire Rail. and Canal Co. (1858), 2 H. & N. 267; 27 L. J. Ex. 97; 30 L. T. (O. S.) 308	222, 236, 238
Charlton <i>v.</i> Rolleston (1884), 28 Ch. D. 237; 54 L. J. Ch. 233; 51 L. T. 612	94, 177, 274, 276
Chasemore <i>v.</i> Richards (1859), 7 H. L. C. 349; 29 L. J. Ex. 81; 7 W. R. 685; 33 L. T. (O. S.) 350; 5 Jur. N. S. 873	154
Chelsea Waterworks Co., <i>Re, Ex parte</i> Phillips (1855), 10 Ex. 731; 24 L. J. Ex. 79; 3 W. R. 174; 1 Jur. N. S. 143; 24 L. T. (O. S.) 223	212, 240
Chelsea Waterworks Co., <i>Re</i> (1887), 56 L. J. Ch. 640; 56 L. T. 421; W. N. 70; 3 Times L. R. 464	48, 258
Cherry's Settled Estates, <i>In re</i> (1862), 4 De G. F. & J. 332; 31 L. J. Ch. 351; 10 W. R. 305; 6 L. T. 31; 8 Jur. N. S. 446 ...	6, 274, 275
Cheshire Lines Committee <i>v.</i> Lewis (1880), 50 L. J. Q. B. 121; 44 L. T. 293; 45 J. P. 404	178
Cheshunt College, <i>Re</i> (1856), 3 W. R. 638; 1 Jur. N. S. 995 ...	256
Chesterfield Corporation and Brampton Local Board, <i>In re</i> (1886), 50 J. P. 824	340, 344, 509, 510
Chilworth Gunpowder Co. and Manchester Ship Canal Co., <i>Re</i> (1891), 8 Times L. R. 79	52, 71, 77, 186, 191
Chissum <i>v.</i> Dewes (1828), 5 Russ. 29; 29 R. R. 10	296
Christ Church (Dean of), <i>Ex parte</i> (1854), 23 L. J. Ch. 149	268
Christ Church, <i>Ex parte</i> (1861), 9 W. R. 474	284

Chr—Coh	PAGE
Christchurch, East Greenwich (Vicar of), <i>Ex parte</i> , London County Council, <i>Ex parte</i> , [1896] 1 Ch. 520; 65 L. J. Ch. 331; 74 L. T. 18; 44 W. R. 520	253
Christchurch Inclosure Act, <i>In re</i> (1888), 38 Ch. D. 520; 57 L. J. Ch. 564; 58 L. T. 827	291
Christ's Hospital, <i>Ex parte</i> (1864), 10 L. T. 262; 12 W. R. 669 ...	245
Christ's Hospital, <i>Ex parte</i> (1875), L. R. 20 Eq. 605; 27 W. R. 458. 279	
Church and School Board for London, <i>In re</i> , R. v. Manley Smith (1892), 40 W. R. 333; 8 Times L. R. 310; 67 L. T. 197; 56 J. P. 729	87, 104, 203, 209, 216, 218
City and South London Rail. Co. v. London County Council, [1891] 2 Q. B. 513; 60 L. J. M. C. 149; 40 W. R. 167; 7 Times L. R. 643	5
City and South London Rail. Co. v. St. Mary Woolnoth and St. Mary Woolchurch Haw, [1903] 2 K. B. 728; 72 L. J. K. B. 936; 88 L. T. 530; 67 J. P. 221; 19 Times L. R. 363; <i>affd.</i> H. L., [1905] A. C. 1; 74 L. J. K. B. 147; 92 L. T. 34; 21 Times L. R. 127; 69 J. P. 101	113
City of Glasgow Union Rail. Co. v. Caledonian Rail. Co. (1871), L. R. 2 H. L. (Sc.) 160	30, 32, 305
City of Glasgow Union Rail. Co. v. Hunter (1870), L. R. 2 H. L. (So.) 78	159, 162, 164, 165, 166
Clark, <i>In re</i> , [1906] 1 Ch. 615; 75 L. J. Ch. 325; 95 L. T. 143; 54 W. R. 385	279
Clark v. School Board for London (1874), L. R. 9 Ch. 120; 43 L. J. Ch. 421; 29 L. T. 903; 22 W. R. 354	11, 12, 92, 152
Clarke's (J.) Estate, <i>In re</i> (1882), 21 Ch. D. 776; 52 L. J. Ch. 88...	283
Clarke v. Wandsworth District Board of Works (1868), 17 L. T. 549. 118	
Claypole (Rector of), <i>Ex parte</i> (1873), L. R. 16 Eq. 574; 42 L. J. Ch. 776; 29 L. T. 51	255
Clergy Orphan Corporation, <i>In re</i> , [1894] 3 Ch. 145; 64 L. J. Ch. 66; 71 L. T. 450; 43 W. R. 150	50, 59, 283
Clippens Oil Co. v. Edinburgh and District Water Trustees, [1904] A. C. 64; 73 L. J. P. C. 32; 89 L. T. 589	95, 129
Clitheroe, <i>In re</i> (1869), 17 W. R. 345; 20 L. T. 6	255
Clothier v. Webster (1862), 12 C. B. N. S. 790; 31 L. J. C. P. 316; 6 L. T. 461; 9 Jur. N. S. 231; 10 W. R. 624	149
Clout and Metropolitan and District Rail. Cos., <i>In re</i> (1882), 46 L. T. 141	188
Clout v. Metropolitan and District Rail. Cos. (1883), 48 L. T. 257...	124
Clowes v. Staffordshire Potteries Waterworks Co. (1872), L. R. 8 Ch. 125; 42 L. J. Ch. 107; 27 L. T. 521; 21 W. R. 32 ...	24, 25, 149
Coats v. Caledonian Rail. Co. (1904), 6 F. 1042	20, 73, 80, 85
Coats v. Clarence Rail. Co. (1830), Russ. & M. 181; 8 L. J. (O. S.) Ch. 72	160
Cobb v. Mid-Wales Rail. Co. (1866), L. R. 1 Q. B. 342; 35 L. J. Q. B. 117; 14 W. R. 775; 12 Jur. N. S. 228; 13 L. T. 342 ...	34, 215
Codrington's Charity, <i>In re</i> (1874), L. R. 18 Eq. 658	263
Cohen v. Wilkinson (1849), 12 Beav. 125, 138; 18 L. J. Ch. 378; 1 Macn. & G. 481; 14 Jur. 535; 1 H. & Tw. 554; 5 Rail. Cas. 758	26, 45

Col—Cot

PAGE

Colac (President, &c. of) <i>v.</i> Summerfield, [1893] A. C. 187; 62 L. J. P. C. 64; 68 L. T. 769	149, 150
Cole <i>v.</i> West London, &c. Rail. Co. (1859), 27 Beav. 242; 28 L. J. Ch. 767; 5 Jur. N. S. 1114; 1 L. T. 178	37
Colley <i>v.</i> London and North Western Rail. Co. (1880), 5 Ex. D. 277; 49 L. J. Ex. 575; 42 L. T. 807; 29 W. R. 16; 44 J. P. 427	452
Collins <i>v.</i> South Staffordshire Rail. Co. (1852), 7 Ex. 5; 21 L. J. Ex. 247; 16 Jur. 843	188, 190
Collis' Estate, <i>Re</i> (1866), 14 L. T. 352	267
Collyer-Bristow & Co., <i>In re</i> , [1901] 2 K. B. 839; 70 L. J. K. B. 941; 85 L. T. 208; 50 W. R. 4	198, 203
Colman <i>v.</i> Eastern Counties Rail. Co. (1846), 10 Beav. 1; 16 L. J. Ch. 73; 11 Jur. 74; 4 Rail. Cas. 513	26
Colwell <i>v.</i> St. Pancras Borough Council, [1904] 1 Ch. 707; 90 L. T. 153; 73 L. J. Ch. 275; 52 W. R. 523; 68 J. P. 286; 2 L. G. R. 518; 20 Times L. R. 236	32, 152
Commissioner of Public Works (Cape Colony) <i>v.</i> Logan, [1903] A. C. 355; 72 L. J. P. C. 91; 88 L. T. 779	1
Commonwealth of Australia <i>v.</i> Hazeldell, Ltd., [1921] 2 A. C. 373; 90 L. J. P. C. 226	1, 137
Conron <i>v.</i> London C. C. (1922), 38 Times L. R. 380; 20 L. G. R. 131; 66 S. J. 350	lxxxvi
Consett Waterworks Co. <i>v.</i> Ritson (1889), 22 Q. B. D. 318, 702; 60 L. T. 360; 53 J. P. 373	129
Cooke <i>v.</i> London C. C., [1911] 1 Ch. 604; 80 L. J. Ch. 423; 104 L. T. 540; 75 J. P. 309; 9 L. G. R. 593	60, 69, 70, 75, 94, 296
Cooling and Great Northern Rail. Co., <i>In re</i> (1849), 6 Rail. Cas. 246; 14 Q. B. 25; 19 L. J. Q. B. 25; 14 Jur. 128	152, 210
Cooling <i>v.</i> Great Northern Rail. Co. (1850), 15 Q. B. 486; 19 L. J. Q. B. 529; 14 Jur. 875	212, 240
Cooper, <i>Ex parte</i> , <i>Re</i> North London Rail. Co. (1865), 2 Dr. & Sm. 312; 34 L. J. Ch. 373; 13 W. R. 364; 11 Jur. N. S. 103; 11 L. T. 661	118, 119, 123, 272, 282
Cooper <i>v.</i> Gostling (1863), 9 L. T. 77; 11 W. R. 931; 4 Giff. 449 ...	49
Cooper <i>v.</i> Metropolitan Board of Works (1883), 25 Ch. D. 472; 53 L. J. Ch. 109; 50 L. T. 602; 32 W. R. 709 ...	57, 76, 118, 273, 297
Cooper <i>v.</i> Norfolk Rail. Co. (1849), 3 Ex. 546; 18 L. J. Ex. 176; 6 Rail. Cas. 94; 13 Jur. 195	285
Copley, <i>Ex parte</i> (1858), 4 Jur. N. S. 297	279
Corpus Christi College, Oxford, <i>Ex parte</i> (1871), L. R. 13 Eq. 334; 41 L. J. Ch. 170	284
Corrie <i>v.</i> MacDermott, [1914] A. C. 1056; 83 L. J. P. C. 370; 111 L. T. 952	108, 112
Corrigal <i>v.</i> London and Blackwall Rail. Co. (1843), 5 Macn. & G. 219; 12 L. J. C. P. 209; 3 Dowl. P. C. (N. S.) 851; 6 Scott, N. R. 241; 3 Rail. Cas. 411	210, 211, 226, 241
Cother <i>v.</i> Midland Rail. Co. (1848), 2 Ph. 469; 17 L. J. Ch. 235; 10 L. T. O. S. 437; 5 Rail. Cas. 187	22, 29
Cotter <i>v.</i> Metropolitan Rail. Co. (1864), 10 L. T. 777; 12 W. R. 1021; 10 Jur. N. S. 1014	95, 99, 174, 176
Cotton's Trustees and London School Board, <i>In re</i> (1882), 19 Ch. D. 624; 51 L. J. Ch. 514; 46 L. T. 813; 30 W. R. 610	174

Cot—Dav	PAGE
Cottrell <i>v.</i> Cottrell (1885), 28 Ch. D. 628; 54 L. J. Ch. 417; 33 W. R. 361; 52 L. T. 486	267, 268
Courage & Co. <i>v.</i> South Eastern Rail. Co. (1902), 19 Times L. R. 61	92, 152
Coventry <i>v.</i> London, Brighton and South Coast Rail. Co. (1867), L. R. 5 Eq. 104; 37 L. J. Ch. 90; 17 L. T. 368; 16 W. R. 267... 310, 313	310, 313
Covington <i>v.</i> Metropolitan District Rail. Co., [1903] 1 K. B. 231; 72 L. J. K. B. 93; 87 L. T. 649; 51 W. R. 428; 19 Times L. R. 142	202, 218
Cowper Essex <i>v.</i> Acton Local Board (1889), 14 App. Cas. 153; 58 L. J. Q. B. 594; 61 L. T. 1; 38 W. R. 209; 53 J. P. 756...142, 150, 151, 161, 162, 163, 164, 166, 238, 239, 241, 511	142, 150, 151, 161, 162, 163, 164, 166, 238, 239, 241, 511
Crampton <i>v.</i> Ridley (1887), 20 Q. B. D. 48; 57 L. T. 809; 36 W. R. 554	198
Crane's Estate, <i>In re</i> (1869), L. R. 7 Eq. 322; 17 W. R. 316	268
Cranwell <i>v.</i> London (Mayor, &c. of) (1870), L. R. 5 Ex. 284; 39 L. J. Ex. 193; 22 L. T. 760	82, 122, 179, 222, 239
Craven, <i>Ex parte</i> (1848), 17 L. J. Ch. 215	254
Crawford <i>v.</i> Chester and Holyhead Rail. Co. (1847), 11 Jur. 917 ...	22
Crawford <i>v.</i> McSwiney, [1904] 2 Ir. R. 15	186
Crawshaw Bailey, <i>In re</i> (1852), Bail Ct. Cas. 66	208
Croft <i>v.</i> London and North Western Rail. Co. (1863), 3 B. & S. 436; 32 L. J. Q. B. 113; 11 W. R. 360; 7 L. T. 741	142, 168, 169
Cromford Canal Co. <i>v.</i> Cutts (1848), 5 Rail. Cas. 442	128, 129
Crook <i>v.</i> Seaford (Corporation of) (1871), L. R. 6 Ch. 551; 25 L. T. 1; 19 W. R. 938	54
Crumbie <i>v.</i> Wallsend Local Board, [1891] 1 Q. B. 503; 60 L. J. Q. B. 392; 64 L. T. 490; 55 J. P. 421	170
Cuckfield Burial Board, <i>Re, Ex parte</i> Abergavenny (Earl of) (1855), 19 Beav. 153; 24 L. J. Ch. 585; 3 W. R. 142	48
D.	
Dare Valley Rail. Co., <i>In re</i> (1868), L. R. 6 Eq. 429; 37 L. J. Ch. 719	199, 222, 223, 224, 225, 236, 238, 239, 241, 242
Dare Valley Rail. Co. and Rhys, <i>In re</i> (1869), L. R. 4 Ch. 554; 38 L. J. Ch. 417; 20 L. T. 291, 717; 17 W. R. 717 ...187, 194, 197, 235	187, 194, 197, 235
Darley Main Colliery Co. <i>v.</i> Mitchell (1886), 11 App. Cas. 127; 55 L. J. Q. B. 529; 54 L. T. 882; 51 J. P. 148	170
Dashwood, <i>Ex parte</i> (1857), 26 L. J. Ch. 299; 3 Jur. N. S. 103 ...	282
Daubney <i>v.</i> Manchester, &c. Rail. Co. (1847), 10 L. T. (O. S.) 283..	100
Davies <i>v.</i> London Corporation, [1913] 1 Ch. 415; 82 L. J. Ch. 286; 108 L. T. 546; 77 J. P. 294; 11 L. G. R. 595; 57 S. J. 341; 29 Times L. R. 315	351, 352
Davies <i>v.</i> South Staffordshire Rail. Co. (1851), 21 L. J. M. O. 52; 15 Jur. 1133; 2 L. M. & P. 599	189
Davis, <i>Ex parte</i> (1858), 3 De G. & J. 144; 27 L. J. Ch. 712; 4 Jur. N. S. 1029	256

Dav—Dou	PAGE
Davis v. Witney Urban District Council (1899), 63 J. P. 279...	341, 511
Dawson v. Great Northern and City Rail. Co., [1905] 1 K. B. 260; 74 L. J. K. B. 190; 92 L. T. 137; 69 J. P. 29; 21 Times L. R. 114	81, 83, 170
Dawson v. Midland Rail. Co. (1872), L. R. 8 Ex. 8; 42 L. J. Ex. 49; 21 W. R. 56	450
Dearberg v. Letchford (1895), 72 L. T. 489	250
De Beauvoir's Trusts, <i>Re</i> (1860), 2 De G. F. & J. 5; 29 L. J. Ch. 567; 6 Jur. N. S. 593; 2 L. T. 364; 8 W. R. 425	279
De Grey's (Earl) Entailed Estate, <i>In re</i> , (1887) W. N. 241; 32 S. J. 108	251, 255
De Keyser's Royal Hotel, Ltd. v. R., (C. A.) [1919] 2 Ch. 197; 88 L. J. Ch. 415; 120 L. T. 396; 63 S. J. 445; 35 Times L. R. 418; (H. L.) [1920] A. C. 508; 89 L. J. Ch. 417; 122 L. T. 691; 64 S. J. 513; 36 Times L. R. 600	1, 334, 335, 336
Denman (J. L.) & Co. v. Westminster Corporation, [1906] 1 Ch. 464; 75 L. J. Ch. 272; 94 L. T. 370; 54 W. R. 345; 70 J. P. 185; 4 L. G. R. 442; 22 Times L. R. 270	352
Denton v. Strong (1874), L. R. 9 Q. B. 117; 43 L. J. Q. B. 41 ...	197
Derby Municipal Estates, <i>In re</i> (1876), 3 Ch. D. 289; 24 W. R. 729	254, 260
Divers, <i>Re</i> (1855), 1 Jur. N. S. 995	282
Dixie v. Wright (1863), 32 Beav. 662	250
Dixon v. Caledonian Rail. Co. (1880), 5 App. Cas. 820; 43 L. T. 513; 29 W. R. 249	133, 135, 137
Dixon v. Great Western Rail. Co., [1897] 1 Q. B. 300; 66 L. J. Q. B. 132; 75 L. T. 539; 45 W. R. 226	450, 452
Dixon v. White (1883), 8 App. Cas. 833	96
Dodd's Estate, <i>Re</i> (1870), 19 W. R. 741; 24 L. T. 542	259
Dodd v. Salisbury and Yeovil Rail. Co. (1859), 1 Giff. 158; 33 L. T. (O. S.) 254, 311; 5 Jur. N. S. 782	28
Doe d. Armistead v. North Staffordshire Rail. Co. (1851), 16 Q. B. 526; 20 L. J. Q. B. 249; 15 Jur. 944	18, 21, 22, 101
Doe d. Hudson v. Leeds and Bradford Rail. Co. (1851), 16 Q. B. 796; 20 L. J. Q. B. 486; 15 Jur. 946	90, 101
Doe d. Hutchinson v. Manchester, &c. Rail. Co. (1845), 15 L. J. Ex. 208; 2 C. & K. 162; 15 M. & W. 687; 9 Jur. 949	271
Doe d. Hyde v. Manchester (Mayor, &c. of) (1852), 12 C. B. 474; 5 De G. & S. 249; 16 Jur. 189	68, 69, 70
Doe d. Payne v. Bristol and Exeter Rail. Co. (1840), 6 M. & W. 320; 2 Rail. Cas. 75	18, 21, 22, 214
Donaldson v. Mayor of South Shields (1899), 68 L. J. Ch. 162; 79 L. T. 685	24, 25, 28, 44
Donisthorpe & Manchester, Sheffield & Lincolnshire Rail. Co., <i>In</i> <i>re</i> , [1897] 1 Q. B. 671; 66 L. J. Q. B. 399; 76 L. T. 371; 45 W. R. 386; 13 Times L. R. 311	219, 220
Douglas and Belfast Corporation, <i>In re</i> , [1909] 2 Ir. R. 30	191
Douglass v. London and North Western Rail. Co. (1856), 3 K. & J. 173; 3 Jur. N. S. 181	271
Doulton v. Metropolitan Board of Works (1870), L. R. 5 Q. B. 333; 39 L. J. Q. B. 165; 18 W. R. 790	203

Dow—Eas	PAGE
Dowling's Trusts, <i>In re</i> (1876), 45 L. J. Ch. 568; 24 W. R. 729...	263, 265
Dowling v. Pontypool, &c. Rail. Co. (1874), L. R. 18 Eq. 714; 43 L. J. Ch. 761	18, 19, 20, 22, 73
Doyné's Traverses, <i>In re</i> (1889), 24 L. R. Ir. 287	67, 81, 91
Drake v. Greaves (1886), 33 Ch. D. 609; 56 L. J. Ch. 133; 55 L. T. 353; 34 W. R. 757	256, 275, 281
Drake v. Trefusis (1875), L. R. 10 Ch. 364; 23 W. R. 762; 33 L. T. 85	255, 260
Dreyfus and Paul, <i>Re</i> (1893), 9 Times L. R. 358; 37 S. J. 357 ...	193
Drummond and Davie's Contract, <i>Re</i> , [1891] 1 Ch. 524	249
Dublin Corporation and Baker, <i>In re, Ex parte</i> Thompson, [1912] 1 Ir. R. 498	272
Dublin (Lord Mayor of) v. Dowling (1880), 6 L. R. Ir. 502	158, 356, 359
Dublin Corporation, <i>In re, Ex parte</i> Dowling (1881), 7 L. R. Ir. 173	282
Dublin (South) City Meat Market, <i>In re, Ex parte</i> Keatley (1890), 25 L. R. Ir. 265	245
Dudley Canal Co. v. Grazebrook (1830), 1 B. & Ad. 59	128, 129, 303, 453
Dudley (Corporation of), <i>In re</i> (1881), 8 Q. B. D. 86; 51 L. J. Q. B. 121; 45 L. T. 733	93, 129, 130, 338, 342, 344, 347, 513
Duffy's Estate, <i>In re</i> , [1897] 1 Ir. R. 307	305
Dun (River) Navigation v. North Midland Rail. Co. (1838), 1 Rail. Cas. 135	25
Dungey v. London (Mayor, &c. of) (1869), 38 L. J. C. P. 298; 20 L. T. 921; 17 W. R. 1106	6
Dunhill v. North Eastern Rail. Co., [1896] 1 Ch. 121; 65 L. J. Ch. 178; 73 L. T. 644; 44 W. R. 231; 12 Times L. R. 91	307
Dunn v. Birmingham Canal Co. (1872), L. R. 8 Q. B. 42; 42 L. J. Q. B. 34; 27 L. T. 683; 21 W. R. 266	453
Durrant v. Branksome Urban District Council, [1897] 2 Ch. 291; 66 L. J. Ch. 653; 76 L. T. 739; 46 W. R. 134	342, 511
Dye v. Patman (1898), 46 W. R. 200; 62 J. P. 135	356
Dyson, <i>In re, Ex parte</i> Huddersfield Corporation (1882), 46 L. T. 730	98
Dyson and Fowke, <i>In re</i> , [1896] 2 Ch. 720; 74 L. T. 759; 65 L. J. Ch. 791; 45 W. R. 28	50
Dyson v. Hornby (1851), 4 De G. & Sm. 481	140

E.

Eagle v. Charing Cross Rail. Co. (1867), L. R. 2 C. P. 638; 36 L. J. C. P. 297; 16 L. T. 593; 15 W. R. 1016...	115, 152, 153, 190, 316
Eastbourne (or Eastham) v. Blackburn Rail. Co. (1854), 9 Ex. 758; 23 L. J. Ex. 199; 2 W. R. 377	232, 235
East Fremantle Corporation v. Annois, [1902] A. C. 213; 71 L. J. P. C. 39; 85 L. T. 732	149, 341
East London Rail. Co., <i>Ex parte, In re</i> King's Leasehold Estates (1873), L. R. 16 Eq. 521; 29 L. T. 288; 21 W. R. 881	178

Eas—Ell

PAGE

East London Rail. Co., <i>In re</i> , Oliver's Claim (1890), 24 Q. B. D. 507; 63 L. T. 147; 38 W. R. 312	189, 219, 220
East London Rail. Co. v. Whitechurch (1874), L. R. 7 H. L. 81; 43 L. J. M. C. 159; 30 L. T. 412; 22 W. R. 665	25, 300, 319
East London Union v. Metropolitan Rail. Co. (1869), L. R. 4 Ex. 309; 38 L. J. Ex. 225	230, 271
East and West India Dock Co., <i>In re</i> (1890), 44 Ch. D. 38; 38 W. R. 516; 62 L. T. 239	63
East and West India Dock Co. v. Gattke (1851), 3 Macn. & G. 155; 20 L. J. Ch. 217	88, 107, 173, 208, 224, 233
East and West India Dock Co. v. Kirk (1887), 12 App. Cas. 738; 57 L. J. Q. B. 295; 58 L. T. 158	190, 191
East and West India Dock Co. and Birmingham Rail. Co. v. Brad- shaw (1849), 5 Rail. Cas. 527	192
Eastern Counties Rail. Co., <i>Ex parte</i> (1848), 5 Rail. Cas. 210.....	98
Eastern Counties Rail. Co. v. Hawkes (1855), 5 H. L. C. 331; 24 L. J. Ch. 601; 3 W. R. 609; 7 Rail. Cas. 188	60
Eastern Counties and London and Blackwall Rail. Cos. v. Mar- riage (1860), 9 H. L. C. 32; 31 L. J. Ex. 73; 8 W. R. 748; 7 Jur. N. S. 53; 8 W. R. 758	7, 34
Eastham (or Eastbourne) v. Blackburn Rail. Co. (1854), 9 Ex. 758; 23 L. J. Ex. 199; 2 W. R. 377	232, 235
Eccleshill Local Board, <i>In re</i> (1880), 13 Ch. D. 365; 49 L. J. Ch. 214; 28 W. R. 536	139, 140
Ecclesiastical Commissioners, <i>Ex parte</i> (1870), 39 L. J. Ch. 623..	278
Ecclesiastical Commissioners v. London and South Western Rail. Co. (1854), 14 C. B. 743; 23 L. J. C. P. 177; 18 Jur. 911	287
Ecclesiastical Commissioners v. Commissioners of Sewers (1880), 14 Ch. D. 305; 28 W. R. 824	206, 352
Eckersley v. Mersey Docks and Harbour Board, [1894] 2 Q. B. 667; 71 L. T. 308	188
Eden v. North Eastern Rail. Co., [1907] A. C. 400; 76 L. J. K. B. 940; 97 L. T. 254; 71 J. P. 450; 23 Times L. R. 685; 51 S. J. 623	133
Eden v. Thompson (1863), 2 H. & M. 6	276, 283
Edinburgh and District Water Trustees v. Clippens Oil Co. (1902), 87 L. T. 275	222
Edinburgh, Perth, &c. Rail. Co. v. Philip (1857), 2 Macq. H. L. (Sc.) 514; 3 Jur. N. S. 249; 5 W. R. 377	67
Edinburgh Street Tramways Co. v. Lord Provost, &c. of Edinburgh, [1894] A. C. 456; 63 L. J. Q. B. 769; 71 L. T. 301; 6 R. 317... 333	
Edmeade, <i>In re</i> (1860), 8 W. R. 327; 6 Jur. N. S. 986	47
Edmundson, <i>Re</i> (1851), 17 Q. B. 67; 21 L. J. M. C. 193	182
Edwardes v. Barrington (1902), 85 L. T. 650; 50 W. R. 358...10, 124	
Edwards, <i>Ex parte</i> (1871), L. R. 12 Eq. 389; 40 L. J. Ch. 697; 25 L. T. 149; 19 W. R. 1047	82
Egremont (Lord), <i>Re</i> (1848), 12 Jur. 618	250
Eldon (Earl) v. North Eastern Rail. Co. (1899), 80 L. T. 273...109, 119	
Elementary Education Acts, <i>In re</i> , [1909] 1 Ch. 55; 78 L. J. Ch. 281; 99 L. T. 862; 73 J. P. 22; 25 Times L. R. 78	246
Elliot, <i>Re</i> , <i>Ex parte</i> South Devon Rail. Co. (1848), 2 De G. & Sm. 17; 12 Jur. 445	188, 189

Eli—Fal

PAGE

Elliot v. North Eastern Rail. Co. (1863), 10 H. L. C. 333; 32 L. J. Ch. 402; 9 Jur. N. S. 555; 8 L. T. 337; 11 W. R. 604...	95, 129, 303
Elliot v. South Devon Rail. Co. (1848), 2 Ex. 725; 17 L. J. Ex. 262; 5 Rail. Cas. 500	45, 312
Ellis and Ruislip-Northwood U. C., <i>In re</i> , [1920] 1 K. B. 343; 88 L. J. K. B. 1258; 83 J. P. 273; 17 L. G. R. 607; 35 Times L. R. 673; 122 L. T. 98	367, 368
Ely (Dean, &c. of) v. Peterborough, Wisbeach, &c. Rail. Co., (1869) W. N. 201	59
Emanuel Hospital v. Metropolitan District Rail. Co. (1869), 19 L. T. 692	239
Emmanuel Hospital, <i>Ex parte</i> (1908), 24 Times L. R.	283
Emsley v. North Eastern Rail. Co., [1896] 1 Ch. 418; 65 L. J. Ch. 385; 74 L. T. 113; 60 J. P. 182; 12 Times L. R. 219	79, 92, 152
English, <i>Re</i> (1865), 13 W. R. 932; 11 Jur. N. S. 434	282
English's Settlement, <i>In re</i> (1888), 39 Ch. D. 556; 57 L. J. Ch. 1048; 60 L. T. 44; 37 W. R. 191	264
Errington v. Metropolitan District Rail. Co. (1882), 19 Ch. D. 559; 51 L. J. Ch. 305; 46 L. T. 443; 30 W. R. 663.....	8, 31, 74, 86, 127, 134, 136, 137, 305
Escott v. Newport Corporation, [1904] 2 K. B. 369; 73 L. J. K. B. 693; 90 L. T. 348; 52 W. R. 543; 68 J. P. 135; 20 Times L. R. 158	72, 154
Esdaile, <i>Re</i> , Esdaile v. Esdaile (1886), 54 L. T. 637	9, 10, 76
Esdaile v. Metropolitan and District Rail. Cos. (1881), 46 J. P. 103	10, 76
Esdaile v. Payne (1888), 13 App. Cas. 613; 58 L. J. Ch. 299; 59 L. T. 568; 37 W. R. 273; 53 J. P. 100	10, 76
Eton College, <i>Ex parte</i> (1851), 20 L. J. Ch. 1; 15 Jur. 45	5
Eton College (Provost of), <i>Ex parte</i> , <i>In re</i> London and Birmingham Rail. Co. (1842), 3 Rail. Cas. 271; 6 Jur. 908	280
Evans, <i>Re</i> (1873), 42 L. J. Ch. 357	273
Evans' Settlement, <i>In re</i> (1880), 14 Ch. D. 511	261
Evans and Glamorgan C. C., <i>In re</i> (1912), 76 J. P. 468; 10 L. G. R. 805; 56 S. J. 668; 28 Times L. R. 517	375
Evans v. Lancashire and Yorkshire Rail. Co. (1853), 1 E. & B. 754; 22 L. J. Q. B. 254; 17 Jur. 878	196
Evans v. Merthyr Tydvil U. D. C., [1899] 1 Ch. 241; 68 L. J. Ch. 175; 79 L. T. 578	291
Eversfield v. Mid Sussex Rail. Co. (1858), 3 De G. & J. 286; 1 Giff. 153; 28 L. J. Ch. 107; 5 Jur. N. S. 776	28
Eyre's Trusts, <i>Re</i> , (1869) W. N. 76	188, 313
Eyton v. Denbigh, &c. Rail. Co. (1868), L. R. 6 Eq. 14; 7 Eq. 439; 37 L. J. Ch. 669	63

F.

Falkingham v. Victorian Railway Commissioners, [1900] A. C. 452; 69 L. J. P. O. 89; 82 L. T. 506	242
Falkner v. Somerset and Dorset Rail. Co. (1873), L. R. 16 Eq. 458; 42 L. J. Ch. 851	15, 37, 38, 40, 43, 45, 313

Fal—Fis	PAGE
Falls <i>v.</i> Belfast and Ballymena Rail. Co. (1849), 12 Ir. L. R. 233.	34
Farlow, <i>Ex parte</i> (1831), 2 B. & Ad. 341	123
Farmer <i>v.</i> London and North Western Rail. Co. (1888), 20 Q. B. D. 788; 59 L. T. 542; 36 W. R. 590	302
Farmer <i>v.</i> Waterloo and City Rail. Co., [1895] 1 Ch. 527; 64 L. J. Ch. 338; 72 L. T. 225; 43 W. R. 363; 59 J. P. 295; 11 Times L. R. 210	11, 18, 73, 93, 104
Farrar <i>v.</i> Cooper (1890), 44 Ch. D. 323; 59 L. J. Ch. 506; 62 L. T. 528; 38 W. R. 410	108, 172
Faversham Charities, <i>Re</i> (1861), 5 L. T. 787	257
Faviell <i>v.</i> Eastern Counties Rail. Co. (1848), 2 Ex. 344; 17 L. J. Ex. 223	190, 191, 242
Fenwick <i>v.</i> East London Rail. Co. (1875), L. R. 20 Eq. 544; 44 L. J. Ch. 602	30, 33, 444
Fergusson <i>v.</i> London, Brighton and South Coast Rail. Co. (1864), 3 De G. J. & S. 653; 33 Beav. 103; 33 L. J. Ch. 29; 9 L. T. 134; 11 W. R. 1088	37
Fernley <i>v.</i> Limehouse Board of Works (1899), 68 L. J. Ch. 344; 80 L. T. 351; 63 J. P. 310	350, 351, 352
Fernley <i>v.</i> Limehouse Board of Works (1900), 82 L. T. 524; 64 J. P. 328	350, 352, 530
Ferrand <i>v.</i> Corporation of Bradford (1856), 21 Beav. 412; 25 L. J. Ch. 389; 27 L. T. (O. S.) 11; 2 Jur. N. S. 175	14
Ferrar <i>v.</i> Commissioners of Sewers in the City of London (1869), L. R. 4 Ex. 1, 227; 38 L. J. Ex. 102; 19 L. T. 485; 21 L. T. 295; 17 W. R. 709	6, 147, 148, 232, 234, 235
Ferrers <i>v.</i> Stafford and Uttoxeter Rail. Co. (1872), L. R. 13 Eq. 524; 41 L. J. Ch. 362	204
Field <i>v.</i> Carnarvon and Llanberis Rail. Co. (1867), L. R. 5 Eq. 190; 37 L. J. Ch. 176; 18 L. T. 534; 16 W. R. 273...93, 95, 144, 173	
Finch <i>v.</i> Great Western Rail. Co. (1879), 5 Ex. D. 254	450
Finchley Electric Light Co. <i>v.</i> Finchley U. C., [1903] 1 Ch. 437; 72 L. J. Ch. 297; 88 L. T. 215; 51 W. R. 375; 67 J. P. 97; 1 L. G. R. 244; 19 Times L. R. 238	71, 72
Finck <i>v.</i> London and South Western Rail. Co. (1890), 44 Ch. D. 330; 58 L. J. Ch. 350; 59 L. J. Ch. 458; 60 L. T. 350; 62 L. T. 881; 37 W. R. 350; 38 W. R. 513; 5 Times L. R. 209 ...18, 20, 21, 22, 29, 73	
Finlay <i>v.</i> Bristol and Exeter Rail. Co. (1852), 7 Ex. 409; 21 L. J. Ex. 117	54
Finnis and Young <i>to</i> Forbes and Pochin (No. 1) (1883), 24 Ch. D. 587; 52 L. J. Ch. 140; 48 L. T. 813; 32 W. R. 55	50, 59
Finsbury, &c. Savings Bank (Trustees of), <i>Ex parte</i> , (1886) W. N. 150	251
Fisher, <i>In re</i> , [1894] 1 Ch. 450; 63 L. J. Ch. 235; 70 L. T. 62; 42 W. R. 241	256, 262, 275, 527
Fisher <i>v.</i> Fisher (1874), L. R. 17 Eq. 340; 43 L. J. Ch. 262; 29 L. T. 720; 22 W. R. 638	275
Fisher <i>v.</i> Great Western Rail. Co., [1911] 1 K. B. 551; 80 L. J. K. B. 299; 103 L. T. 885; 55 S. J. 76; 27 Times L. R. 96...201, 326	
Fisher <i>v.</i> Pimbley (1809), 11 East, 188	242

Fit—Fal	PAGE
Fitzhardinge (Lord) <i>v.</i> Gloucester and Berkeley Canal Co. (1872), L. R. 7 Q. B. 776; 41 L. J. Q. B. 316; 27 L. T. 196; 20 W. R. 800185, 201, 203, 223	
Fleming <i>v.</i> Newport Rail. Co. (1883), 8 App. Cas. 265108, 126, 150, 154	
Flemon's Trusts, <i>In re</i> (1870), L. R. 10 Eq. 612; 40 L. J. Ch. 86. 262, 277	
Fletcher <i>v.</i> Birkenhead Corporation, [1907] 1 K. B. 205; 76 L. J. K. B. 218; 96 L. T. 287; 71 J. P. 111; 5 L. G. R. 293; 23 Times L. R. 195145, 147, 148, 152, 160	
Fletcher <i>v.</i> Great Western Rail. Co. (1860), 5 H. & N. 689; 29 L. J. Ex. 253; 8 W. R. 501132	
Fletcher <i>v.</i> Lancashire and Yorkshire Rail. Co., [1902] 1 Ch. 901; 71 L. J. Ch. 590; 50 W. R. 423; 66 J. P. 631; 18 Times L. R. 417133, 139, 141	
Flower, <i>Ex parte</i> (1866), L. R. 1 Ch. 599; 36 L. J. Ch. 193; 12 Jur. N. S. 87298, 177, 274, 277, 299	
Flower <i>v.</i> London, Brighton and South Coast Rail. Co. (1865), 2 Dr. & Sm. 330; 34 L. J. Ch. 540; 12 L. T. 10; 13 W. R. 518... 31	
Fobbing (Commissioners of Sewers for) <i>v.</i> R. (1886), 11 App. Cas. 449; 56 L. J. M. C. 1; 55 L. T. 493; 34 W. R. 721; 51 J. P. 227181	
Fooks, <i>Re</i> (1849), 2 Macn. & G. 357 97	
Fooks <i>v.</i> Wilts. &c. Rail. Co. (1846), 5 Hare, 199; 4 Rail. Cas. 21089, 91	
Ford <i>v.</i> Metropolitan and Metropolitan District Rail. Cos. (1886), 17 Q. B. D. 12; 55 L. J. Q. B. 296; 54 L. T. 718; 34 W. R. 426; 50 J. P. 661; 1 Cab. & Ell. 593152, 157	
Ford <i>v.</i> Plymouth, &c. Rail. Co., (1887) W. N. 20190, 92	
Fortescue <i>v.</i> St. Matthew, Bethnal Green, Vestry, [1891] 2 Q. B. 170; 60 L. J. M. C. 172; 65 L. T. 256; 55 J. P. 758..... 520	
Forth Bridge Rail. Co. <i>v.</i> Dunfermline Guildry, [1909] S. C. 493; [1910] S. C. 316137	
Foster <i>v.</i> London, Chatham and Dover Rail. Co., [1895] 1 Q. B. 711; 64 L. J. Q. B. 65; 71 L. T. 855; 43 W. R. 116.....24, 138, 304	
Foster <i>v.</i> Sheffield Corporation (1895), 72 L. T. 549; 59 J. P. 404. 201	
Fotherby <i>v.</i> Metropolitan Rail. Co. (1867), L. R. 2 C. P. 188; 36 L. J. C. P. 88; 15 L. T. 243; 15 W. R. 112; 12 Jur. N. S. 100587, 174, 207	
Fox <i>v.</i> Amhurst (1875), L. R. 20 Eq. 403; 44 L. J. Ch. 666...291, 293	
Frank Warr & Co. <i>v.</i> London County Council, [1904] 1 K. B. 713; 73 L. J. K. B. 362; 90 L. T. 368; 52 W. R. 405; 68 J. P. 335; 20 Times L. R. 346; 2 L. G. R. 72310, 124	
Fraser <i>v.</i> City of Fraserville, [1917] A. C. 187; 86 L. J. P. C. 91; 116 L. T. 258; 33 Times L. R. 179108, 109	
French <i>v.</i> London, Tilbury and Southend Rail. Co. (1886), 2 Times L. R. 395152	
Frere and Staveley Taylor & Co. and North Shore Mill Co., <i>In re.</i> [1905] 1 K. B. 366; 74 L. J. K. B. 208; 92 L. T. 194; 53 W. R. 242; 21 Times L. R. 188195	
Fullerton's Will, <i>In re.</i> [1906] 2 Ch. 138; 75 L. J. Ch. 552; 94 L. T. 667258, 259	

Fur—Gil	PAGE
Furness and Willesden U. C., <i>In re</i> (1906), 70 J. P. 25; 22 Times L. R. 52	82
Furness Rail. Co. v. Cumberland Co-operative Building Society (1884), 52 L. T. 144	155, 156
Furniss v. Midland Rail. Co. (1868), L. R. 6 Eq. 473	40
G.	
Galliers v. Metropolitan Rail. Co. (1871), L. R. 11 Eq. 410; 40 L. J. Ch. 544; 19 W. R. 795	272
Galloway v. London (Mayor, &c. of) (1866), 12 Jur. N. S. 182 ...	211
Galloway v. London (Mayor, &c. of) (1866), L. R. 1 H. L. 34; 2 De G. & S. 213; 35 L. J. Ch. 477; 14 L. T. 865; 13 W. R. 701; 12 Jur. N. S. 747	25, 28, 45
Gamston (Rector of), <i>Ex parte</i> (1876), 1 Ch. D. 477; 33 L. T. 803; 24 W. R. 359	255
Gard v. Commissioners of Sewers (1884), 28 Ch. D. 486; 49 L. T. 325	350, 352, 531
Gardner v. Charing Cross Rail. Co. (1862), 2 J. & H. 248; 31 L. J. Ch. 181; 5 L. T. 418; 10 W. R. 120; 8 Jur. N. S. 151...36, 41, 42, 56	
Gaselee, <i>In re</i> , [1901] 1 Ch. 923; 70 L. J. Ch. 441; 84 L. T. 386; 49 W. R. 372	262, 278
Gaskell, <i>Ex parte</i> , <i>In re</i> Manchester and Leeds Rail. Co. (1876), 2 Ch. D. 360; 45 L. J. Ch. 368; 24 W. R. 752	283, 284
Gaskell v. Somersetshire C. C. (1920), 84 J. P. 93; 18 L. G. R. 245	371, 372
Gedling Rectory, <i>Re</i> (1885), 53 L. T. 244	263
Gedye v. Commissioners of Works, [1891] 2 Ch. 630; 60 L. J. Ch. 587; 65 L. T. 359; 39 W. R. 598	261, 271, 273
Genders v. London C. C., [1919] 1 Ch. 1; 84 L. J. Ch. 42; 112 L. T. 365; 79 J. P. 121; 13 L. G. R. 14; 59 S. J. 58; 31 Times L. R. 34	44, 45
Gerard (Lord) and Beecham, <i>In re</i> , [1894] 3 Ch. 295; 63 L. J. Ch. 695; 71 L. T. 272; 42 W. R. 678	63
Gerard (Lord) and London and North Western Rail. Co., <i>In re</i> , [1894] 2 Q. B. 915; [1895] 1 Q. B. 459; 63 L. J. Q. B. 764; 64 L. J. Q. B. 260; 72 L. T. 142; 43 W. R. 374	131, 135, 190, 191, 195
Gething v. Fotheringham (1865), 13 W. R. 96	191
Gibbon v. Paddington Vestry, [1900] 2 Ch. 794; 69 L. J. Ch. 746; 83 L. T. 136; 49 W. R. 8; 64 J. P. 727; 16 Times L. R. 538 ...	351
Gibson v. Hammersmith Rail. Co. (1863), 32 L. J. Ch. 337; 8 L. T. 43; 2 Dr. & Sm. 603; 9 Jur. N. S. 221; 11 W. R. 299...39, 116	
Gifford and Bury Town Council, <i>In re</i> (1888), 20 Q. B. D. 368; 57 L. J. Q. B. 181; 58 L. T. 522; 36 W. R. 468; 52 J. P. 119...340, 509	
Gilbert and Wright, <i>In re</i> (1903), 68 J. P. 143; 20 Times L. R. 164..	198
Giles v. London, Chatham and Dover Rail. Co. (1861), 1 Dr. & Sm. 406; 30 L. J. Ch. 603; 5 L. T. 479; 9 W. R. 587; 7 Jur. N. S. 509	95, 206
Gillard v. Cheshire Lines Committee (1883), 32 W. R. 943	152

Gla—Gow	PAGE
Glamorganshire Canal Navigation Co. <i>v.</i> Nixon's Navigation Co. (1901), 85 L. T. 53; 17 Times L. R. 184, 647	95, 129
Glasgow (City of) Union Rail. Co. <i>v.</i> Caledonian Rail. Co. (1871), L. R. 2 H. L. (Sc.) 160	30, 32, 305
Glasgow (City of) Union Rail. Co. <i>v.</i> Hunter (1870), L. R. 2 H. L. (Sc.) 78	159, 162, 164, 165, 166
Glasgow Corporation <i>v.</i> Glasgow and South Western Rail. Co., [1895] A. C. 376; 64 L. J. P. O. 171; 72 L. T. 809; 59 J. P. 788	146
Glasgow (Lord Provost, &c. of) <i>v.</i> Farie (1888), 13 App. Cas. 657; 58 L. J. P. C. 33; 60 L. T. 274; 37 W. R. 627	132, 136, 137
Glasgow and South Western Rail. Co. <i>v.</i> Bain (1893), 21 R. 134... ..	137
Gloucester (Dean, &c. of), <i>Ex parte</i> (1850), 19 L. J. Ch. 400	268
Glover <i>v.</i> North Staffordshire Rail. Co. (1851), 16 Q. B. 912; 20 L. J. Q. B. 376; 15 Jur. 673	151, 152
Glyn <i>v.</i> Aberdare Rail. Co. (1859), 6 C. B. N. S. 359; 28 L. J. C. P. 271; 5 Jur. N. S. 1011	212, 232
Goldberg & Sons <i>v.</i> Liverpool Corporation (1900), 16 Times L. R. 320; 82 L. T. 362	31
Goldsmiths' Company <i>v.</i> West Metropolitan Rail. Co., [1904] 1 K. B. 1; 72 L. J. K. B. 931; 89 L. T. 428; 68 J. P. 41; 52 W. R. 21; 20 Times L. R. 7	78
Gonty and Manchester, Sheffield and Lincolnshire Rail. Co., <i>In re</i> , [1896] 2 Q. B. 439; 65 L. J. Q. B. 625; 75 L. T. 239; 45 W. R. 83; 12 Times L. R. 617	23, 24, 44, 138, 194, 205, 221, 303
Goodson <i>v.</i> Richardson (1874), L. R. 9 Ch. 221; 43 L. J. Ch. 790; 30 L. T. 142; 22 W. R. 337	45, 71, 72
Gordon <i>v.</i> St. Mary Abbott's, Kensington (Vestry of), [1894] 2 Q. B. 742; 63 L. J. M. C. 193; 71 L. T. 196	350, 351
Gore Langton's Estates, <i>In re</i> (1875), L. R. 10 Ch. 328; 44 L. J. Ch. 405; 32 L. T. 785; 23 W. R. 842	253, 264, 265
Gosling, <i>Ex parte</i> , R. <i>v.</i> Hungerford Market Co. (1833), 4 B. & Ad. 596	123
Gough's Trusts, <i>In re</i> , <i>Ex parte</i> Great Western Rail. Co. (1883), 24 Ch. D. 569; 53 L. J. Ch. 200; 49 L. T. 494; 32 W. R. 147	276
Gough and Aspatria, &c. Water Board, <i>In re</i> , [1903] 1 K. B. 574; [1904] 1 K. B. 417; 72 L. J. K. B. 285; 73 L. J. K. B. 228; 88 L. T. 421; 90 L. T. 43; 51 W. R. 590; 52 W. R. 552; 67 J. P. 137; 68 J. P. 229; 20 Times L. R. 129	110, 111
Gough and Liverpool (Mayor, &c. of), <i>In re</i> (1890), 6 Times L. R. 453	195
Gough <i>v.</i> Liverpool (Mayor, &c. of) (1891), 7 Times L. R. 581; 64 L. T. 596; 65 L. T. 512; 55 J. P. 648, 789	356, 359
Gough <i>v.</i> Liverpool (Mayor, &c. of) (1892), 8 Times L. R. 247, 323	221, 225, 356
Gould <i>v.</i> Staffordshire Potteries Waterworks Co. (1850), 5 Ex. 214; 19 L. J. Ex. 281; 6 Rail. Cas. 568; 1 L. M. & P. 264; 14 Jur. 528	116, 200, 202, 216
Gower's Walk Schools and London, Tilbury and Southend Rail. Co., <i>In re</i> (1889), 24 Q. B. D. 40, 326; 59 L. J. Q. B. 162; 62 L. T. 306; 38 W. R. 343	14, 145, 152, 153, 165, 358

TABLE OF CASES.

xxxv

Gra—Gri	PAGE
Grand Junction Canal Co. <i>v.</i> Petty (1888), 21 Q. B. D. 273; 57 L. J. Q. B. 572; 59 L. T. 767; 36 W. R. 795; 52 J. P. 692...24, 138, 303, 304	
Gray <i>v.</i> North Eastern Rail. Co. (1876), 1 Q. B. D. 696; 45 L. J. Q. B. 818; 34 L. T. 757; 24 W. R. 758	201
Great Central Rail. Co. <i>v.</i> Balby-with-Hexthorpe U. C., [1912] 2 Ch. 110; 81 L. J. Ch. 596; 106 L. T. 413; 76 J. P. 205; 10 L. G. R. 687; 56 S. J. 343; 28 Times L. R. 268	23, 303, 304
Great Eastern Rail. Co. and London C. C., <i>In re</i> (1908), 98 L. T. 116; 72 J. P. 1	155
Great Northern Rail. Co., <i>Ex parte</i> (1848), 16 Sim. 169; 5 Rail. Cas. 269; 17 L. J. Ch. 314; 12 Jur. 885	97
Great Northern Rail. Co. <i>v.</i> Inland Revenue Commissioners, [1901] 1 K. B. 416; 70 L. J. K. B. 336; 84 L. T. 183; 49 W. R. 261; 65 J. P. 275	133
Great Northern Rail. Co. <i>v.</i> McAlister, [1897] 1 Ir. R. 587 ...127, 450	
Great Northern and City Rail. Co. <i>v.</i> Tillett, [1902] 1 K. B. 874; 71 L. J. K. B. 525; 86 L. T. 723; 50 W. R. 652; 66 J. P. 742 ... 178, 182, 222, 233	
Great Western Rail. Co., <i>Ex parte, Re</i> Sheriff of Gloucester (1851), 18 L. T. (O. S.) 92	212, 215
Great Western Rail. Co., <i>Ex parte</i> (1909), 74 J. P. 21	257
Great Western Rail. Co. <i>v.</i> Bennett (1867), L. R. 2 H. L. 27; 36 L. J. Q. B. 133; 16 L. T. 186; 15 W. R. 647...127, 131, 132, 135, 303	
Great Western Rail. Co. <i>v.</i> Blades, [1901] 2 Ch. 624; 70 L. J. Ch. 847; 85 L. T. 308; 65 J. P. 791; 17 Times L. R. 693	137
Great Western Rail. Co. <i>v.</i> Carpalla United China Clay Co. (No. 1), [1910] A. O. 83; 79 L. J. Ch. 117; 101 L. T. 785; 74 J. P. 57; 54 S. J. 151; 26 Times L. R. 190	137, 138
Great Western Rail. Co. <i>v.</i> Cefn Cribbwr Brick Co., [1894] 2 Ch. 157; 63 L. J. Ch. 500; 70 L. T. 279; 42 W. R. 493	95, 129
Great Western Rail. Co. <i>v.</i> Fletcher (1860), 5 H. & N. 689; 29 L. J. Ex. 253; 8 W. R. 501	132
Great Western Rail. Co. <i>v.</i> May (1875), L. R. 7 H. L. 283; 43 L. J. Q. B. 233; 31 L. T. 137; 23 W. R. 141	306, 308, 309, 310, 311
Great Western Rail. Co. <i>v.</i> Solihull Rural District Council (1902), 86 L. T. 852; 66 J. P. 772	23
Great Western Rail. Co. <i>v.</i> Swindon, &c. Rail. Co. (1884), 9 App. Cas. 787; 22 Ch. D. 677; 53 L. J. Ch. 1075; 51 L. T. 798; 32 W. R. 957; 48 J. P. 821	6, 9, 11, 12, 14, 15, 16, 40, 60, 65, 90, 92, 107
Great Western Rail. Co. <i>v.</i> Talbot, [1902] 2 Ch. 759; 71 L. J. Ch. 835; 87 L. T. 405; 51 W. R. 312; 18 Times L. R. 775	127, 450
Green <i>v.</i> Hackney Corporation, [1910] 2 Ch. 105; 80 L. J. Ch. 16; 102 L. T. 722; 74 J. P. 278; 9 L. G. R. 427	351
Greenhalgh <i>v.</i> Manchester, &c. Rail. Co. (1838), 3 My. & Cr. 784; 8 L. J. Ch. 75	91
Gregory <i>v.</i> Mighell (1811), 18 Ves. 328; 11 R. R. 207	54
Gregson's Trusts, <i>Re</i> (1864), 2 H. & M. 504; 34 L. J. Ch. 41	283
Grierson <i>v.</i> Cheshire Lines Committee (1874), L. R. 19 Eq. 83; 44 L. J. Ch. 35; 31 L. T. 428; 23 W. R. 68	42, 80
Griffith <i>v.</i> Cambrian Rail. Co. (1869), 17 W. R. 979; 21 L. T. 290...	63

Gri—Har	PAGE
Griggs, <i>In re, Ex parte</i> London School Board, [1914] 2 Ch. 547; 83 L. J. Ch. 835; 111 L. T. 931; 13 L. G. R. 27; 58 S. J. 796; 80 J. P. 35	281
Grimoldby (Rector of), <i>Ex parte, In re</i> Louth and East Coast Rail. Co. (1876), 2 Ch. D. 225; 24 W. R. 723	255
Grosvenor (Lord) <i>v.</i> Hampstead Junction Rail. Co. (1857), 1 De G. & J. 446; 26 L. J. Ch. 731; 3 Jur. N. S. 1085	35, 37, 39
Guarantee Society and Levy, <i>In re</i> (1844), 1 D. & L. 907	193
Guest <i>v.</i> Poole and Bournemouth Rail. Co. (1870), L. R. 5 C. P. 553; 39 L. J. C. P. 329; 22 L. T. 589; 18 W. R. 836	55, 66, 87, 107, 207
Guilden Sutton (Incumbent of), <i>Ex parte</i> (1856), 8 De G. M. & G. 380; 4 W. R. 582; 2 Jur. N. S. 793	278

H.

Haberdashers' Company, <i>Ex parte</i> (1886), 55 L. T. 758	257
Haigh <i>v.</i> Haigh (1862), 31 L. J. Ch. 420; 6 L. T. 507	193
Haigh and London and North Western Rail. Co., <i>In re</i> , [1896] 1 Q. B. 649; 65 L. J. Q. B. 512; 74 L. T. 655; 44 W. R. 618; 12 Times L. R. 298	188
Hall's Estate, <i>In re</i> (1870), L. R. 9 Eq. 179; 39 L. J. Ch. 392	49, 258
Hall and Hinds, <i>Re</i> (1841), 2 Man. & G. 847	199
Hall <i>v.</i> Bristol (Mayor, &c. of) (1867), L. R. 2 C. P. 322	148, 341, 348, 511
Hall <i>v.</i> London, Chatham and Dover Rail. Co. (1868), 14 L. T. 351. ..	51
Halstead United Charities, <i>In re</i> (1875), L. R. 20 Eq. 48	264, 265
Hamilton's (Duke of) Trustees <i>v.</i> Caledonian Rail. Co. (1905), 7 F. 847	133, 136, 228
Hammersmith Rail. Co. <i>v.</i> Brand (1869), L. R. 4 H. L. 171; 38 L. J. Q. B. 265; 21 L. T. 238; 18 W. R. 12	7, 145, 148, 150, 151, 159, 166
Hampstead, &c. Junction Rail. Co., <i>Re, Ex parte</i> Buck (1863), 1 H. & M. 519; 33 L. J. Ch. 79; 9 Jur. N. S. 1172; 9 L. T. 374; 12 W. R. 100	245, 246, 299
Hanbury's Trusts, <i>Re</i> (1883), 52 L. J. Ch. 687; 31 W. R. 784 ..	262, 277, 280
Hanley Coal Co. <i>v.</i> North Staffordshire Rail. Co. (1891), 64 L. T. 656	135
Harding <i>v.</i> Board of Land and Works (1886), 11 App. Cas. 208; 55 L. J. P. C. 11; 55 L. T. 225	316
Harding <i>v.</i> Metropolitan Rail. Co. (1872), L. R. 7 Ch. 154; 41 L. J. Ch. 371; 26 L. T. 109; 20 W. R. 321	57, 228
Hardwicke (Earl of), <i>Ex parte</i> (1852), 1 De G. M. & G. 297 ...	249
Hardy's Estate, <i>Re</i> (1854), 18 Jur. 370	279
Hargreave's Trust, <i>Re</i> (1888), 58 L. T. 367	252
Harper, <i>Ex parte</i> (1874), L. R. 18 Eq. 539; 22 W. R. 942	187, 194
Harper and Great Eastern Rail. Co., <i>In re</i> (1875), L. R. 20 Eq. 39; 44 L. J. Ch. 507; 32 L. T. 214; 23 W. R. 371	187, 194, 197, 199, 241, 242

Har—Hex

PAGE

Harpur v. Swansea Corporation, [1913] A. C. 597; 82 L. J. K. B. 1208; 109 L. T. 576; 77 J. P. 381; 11 L. G. R. 1096; 57 S. J. 773; 29 Times L. R. 737	145, 147, 161, 184
Harrington (Earl of) v. Metropolitan Rail. Co. (1866), 13 L. T. 583, 658	78
Harris, <i>In re</i> , <i>Ex parte</i> London County Council, [1901] 1 Ch. 931; 70 L. J. Ch. 432; 84 L. T. 203	273
Harrison's Estate, <i>In re</i> (1870), L. R. 10 Eq. 532; 18 W. R. 1065...	274
Harrison v. Southwark and Vauxhall Water Co., [1891] 2 Ch. 409; 60 L. J. Ch. 630; 64 L. T. 864	30, 151
Harrop's Estate, <i>Re</i> (1857), 3 Drew. 726; 26 L. J. Ch. 516; 3 Jur. N. S. 380; 5 W. R. 449	250
Harrop's Trusts, <i>In re</i> (1883), 24 Ch. D. 717; 48 L. T. 937	260
Harvey and London County Council, <i>In re</i> , [1909] 1 Ch. 528; 78 L. J. Ch. 285; 100 L. T. 293; 73 J. P. 124; 7 L. G. R. 247; 25 Times L. R. 221	358
Harvie v. South Devon Rail. Co. (1875), 32 L. T. 1; 23 W. R. 202.	36, 41
Hasker v. Wood (1885), 54 L. J. Q. B. 419; 33 W. R. 697	275
Hawkins, <i>Ex parte</i> (1843), 13 Sim. 569	56
Hawley and North Staffordshire Rail. Co., <i>In re</i> (1848), 2 De G. & S. 33; 12 Jur. 389	191, 192
Haworth, <i>In re</i> , (1885) W. N. 48	251
Hayne, <i>Re</i> (1865), 13 W. R. 492; 12 L. T. 200	227, 272
Haynes v. Barton (1861), 1 Dr. & Sm. 483; 30 L. J. Ch. 804; 7 Jur. N. S. 699; 9 W. R. 777; 4 L. T. 764	277
Haynes v. Barton (1866), L. R. 1 Eq. 422; 35 L. J. Ch. 233; 13 L. T. 787; 14 W. R. 257	264
Haynes v. Haynes (1861), 1 Dr. & Sm. 426; 30 L. J. Ch. 578; 7 Jur. N. S. 595; 4 L. T. 199; 9 W. R. 497	56
Haynes v. King, [1893] 3 Ch. 439; 63 L. J. Ch. 21; 69 L. T. 855; 42 W. R. 56	72
Hayward v. Metropolitan Rail. Co. (1863), 4 B. & S. 787; 33 L. J. Q. B. 73; 9 L. T. 680; 12 W. R. 577; 10 Jur. N. S. 418...	201, 209, 215, 216, 217
Healey v. Thames Valley Rail. Co. (1864), 5 B. & S. 769; 34 L. J. Q. B. 52; 13 W. R. 44; 10 Jur. N. S. 1182	75, 186, 232, 235
Hedges v. Metropolitan Rail. Co. (1860), 28 Beav. 109; 3 L. T. 643. 79, 84, 85	
Henniker v. Chafy (1860), 28 Beav. 126; 7 Jur. N. S. 87; (1864), 35 Beav. 124; 11 Jur. N. S. 919	264
Herring v. Metropolitan Board of Works (1865), 19 C. B. N. S. 510; 34 L. J. M. C. 224	158, 348
Herron v. Rathmines and Rathgar Improvement Commissioners, [1892] A. C. 498	21, 23, 26
Hewitt and Portsmouth Waterworks Co., <i>In re</i> (1862), 10 W. R. 780	193
Hewson v. London and South Western Rail. Co. (1860), 2 L. T. 369; 8 W. R. 467	37
Hext v. Gill (1872), L. R. 7 Ch. 699; 41 L. J. Ch. 761; 27 L. T. 291; 20 W. R. 957	137

Hic—Hor

PAGE

Hicks, <i>In re</i> , <i>Ex parte</i> North Eastern Rail. Co. (1894), 70 L. T. 529; 63 L. J. Ch. 568	251
Higgins and Hitchman's Contract, <i>In re</i> (1882), 21 Ch. D. 95; 51 L. J. Ch. 772; 30 W. R. 700; 46 J. P. 805	309, 314
Higgins v. Dublin (Mayor, &c. of) (1891), 28 L. R. Ir. 484 ...	339, 357, 360, 507
Hilcoat v. Canterbury and York (Archbishops of) (1850), 10 C. B. 327; 19 L. J. C. P. 376	112, 113
Hill v. Midland Rail. Co. (1882), 21 Ch. D. 143; 51 L. J. Ch. 774; 47 L. T. 225; 30 W. R. 774	9, 4, 16, 92, 94
Hill v. Wallasey Local Board, [1894] 1 Ch. 133; 63 L. J. Ch. 1; 69 L. T. 641; 42 W. R. 81	342, 511
Hoare & Co., Ltd. v. Lewisham Corporation (1902), 18 Times L. R. 816; 87 L. T. 464; 67 J. P. 20	54
Hobbs v. Midland Rail. Co. (1882), 20 Ch. D. 418; 51 L. J. Ch. 320; 46 L. T. 270; 30 W. R. 516	303, 307, 311
Hobson's Trusts, <i>In re</i> (1878), 7 Ch. D. 708; 47 L. J. Ch. 310; 26 W. R. 470; 38 L. T. 365	257
Holborn and Frascati, Ltd. v. London C. C. (1916), 85 L. J. Ch. 266; 114 L. T. 541; 80 J. P. 225; 14 L. G. R. 538	317
Holditch v. Canadian Northern Ontario Railway, [1916] 1 A. C. 536; 85 L. J. P. C. 107; 114 L. T. 475; 32 Times L. R. 294... ..	148, 159, 162
Holdsworth v. Wilson (1863), 4 B. & S. 1; 32 L. J. Q. B. 289; 8 L. T. 434; 11 W. R. 733; 10 Jur. N. S. 171	192, 203
Hollick, <i>Ex parte</i> (1846), 16 L. J. Ch. 71; 4 Rail. Cas. 498	253
Holliday v. Wakefield (Mayor, &c. of) (1888), 20 Q. B. D. 699; [1891] A. C. 81; 60 L. J. Q. B. 361; 64 L. T. 1; 40 W. R. 129; 55 J. P. 325	8, 74, 132, 134, 135, 169
Hollinsworth, <i>Ex parte</i> (1871), 19 W. R. 580; 24 L. T. 347	273
Holman's Settlement, <i>In re</i> , (1877) W. N. 272	98
Holt v. Gas Light and Coke Co. (1872), L. R. 7 Q. B. 728; 41 L. J. Q. B. 351; 27 L. T. 442	161, 311
Holywell (Rector of), <i>Ex parte</i> (1865), 2 Dr. & Sm. 463; 13 W. R. 960	279
Hood v. North Eastern Rail. Co. (1870), L. R. 11 Eq. 116; 40 L. J. Ch. 17; 23 L. T. 433; 19 W. R. 266	451
Hood v. West Ham Corporation (1910), 74 J. P. 179	282
Hooper v. Bourne (1877), 3 Q. B. D. 258; 47 L. J. Q. B. 437; (1880), 5 App. Cas. 1; 49 L. J. Q. B. 370; 42 L. T. 97; 28 W. R. 493	33, 305, 306, 308, 310
Hooper v. Bristol Port Rail. and Pier Co. (1866), 35 L. J. C. P. 299	233
Hopkins v. Great Northern Rail. Co. (1877), 2 Q. B. D. 224; 46 L. J. Q. B. 265; 36 L. T. 898	8, 9, 160
Hopper, <i>In re</i> (1867), L. R. 2 Q. B. 367; 8 B. & S. 100; 36 L. J. Q. B. 97; 15 L. T. 566; 15 W. R. 443	193
Hordern, <i>Ex parte</i> (1848), 2 De G. & Sm. 263; 12 Jur. 846	263
Hore v. Smith (1849), 13 L. T. (O. S.) 399; 14 Jur. 55	264
Hornby v. Liverpool United Gas Co. (1883), 47 J. P. 231	151
Horne v. Lymington Rail. Co. (1874), 31 L. T. 167	305

TABLE OF CASES.

xxxix

Hor—Ive

PAGE

Horrocks <i>v.</i> Metropolitan Rail. Co. (1863), 4 B. & S. 315; 11 W. R. 910; 10 Jur. N. S. 204; 32 L. J. Q. B. 367; 8 L. T. 663	222, 225, 234, 238
Horrocks <i>v.</i> Metropolitan Rail. Co. (1865), 19 C. B. N. S. 139 ...	211
Horton <i>v.</i> Colwyn Bay and Colwyn U. C., [1908] 1 K. B. 327; 77 L. J. K. B. 215; 98 L. T. 547; 72 J. P. 57; 5 L. G. R. 211; 52 S. J. 158; 24 Times L. R. 220	161, 163, 341
Horwood's Estate, <i>Re</i> (1861), 3 Giff. 218	257
Hosking <i>v.</i> Phillips (1848), 3 Ex. 168; 18 L. J. Ex. 1; 5 Rail. Cas. 560; 12 Jur. 1030	99
Howell <i>v.</i> Metropolitan District Rail. Co. (1881), 19 Ch. D. 508; 51 L. J. Ch. 158; 45 L. T. 707; 30 W. R. 100	230
Howley Park Coal and Cannel Co. <i>v.</i> London and North Western Rail. Co., [1913] A. C. 11; 82 L. J. Ch. 76; 107 L. T. 625; 57 S. J. 42; 29 Times L. R. 35	132
Huddersfield Corporation, <i>Ex parte, In re</i> Dyson (1882), 46 L. T. 730	98
Huddersfield Corporation and Jacomb, <i>In re</i> (1874), L. R. 10 Ch. 92; 44 L. J. Ch. 96; 31 L. T. 466; 23 W. R. 100...17, 128, 129, 134, 243	
Huddersfield Corporation <i>v.</i> Shaw (1890), 54 J. P. 724	183
Hudson (Doe d.) <i>v.</i> Leeds and Bradford Rail. Co. (1851), 16 Q. B. 796; 20 L. J. Q. B. 486; 15 Jur. 946	90, 101
Hughes <i>v.</i> Metropolitan Board of Works (1861), 7 Jur. N. S. 986; 4 L. T. 318; 9 W. R. 517	347
Hunt's Estate, <i>In re</i> , (1884) W. N. 181	269
Hunt <i>v.</i> Wimbledon Local Board (1878), 4 C. P. D. 48; 48 L. J. C. P. 207; 39 L. T. 35; 27 W. R. 123	54
Hutchinson (Doe d.) <i>v.</i> Manchester, Bury, &c. Rail. Co. (1845), 15 L. J. Ex. 208; 2 C. & K. 162; 15 M. & W. 687; 9 Jur. 949	271
Hutchinson <i>v.</i> Manchester, Bury, &c. Rail. Co. (1846), 15 M. & W. 314; 15 L. J. Ex. 293; 3 Rail. Cas. 748; 10 Jur. 361.....	91, 105
Hyde <i>v.</i> Manchester (Mayor, &c. of) (1852), 5 De G. & S. 249; 16 Jur. 189; 12 C. B. 474	68, 69, 70

I.

Inge <i>v.</i> Birmingham, &c. Rail. Co. (1853), 3 De G. M. & G. 658; 1 Sm. & Giff. 347; 21 L. T. (O. S.) 123	88
Islington Borough Council, <i>In re</i> (1907), 97 L. T. 78; 5 L. G. R. 1203; 71 J. P. 396	257, 265
Islington Borough Council <i>v.</i> London School Board, [1903] 2 K. B. 354; 72 L. J. K. B. 677; 89 L. T. 53; 52 W. R. 115; 1 L. G. R. 704	302
Issauchaud, <i>Ex parte</i> (1839), 3 Y. & C. (Ex.) 721	274
Iveson <i>v.</i> Moore (1697), 1 Ld. Raym. 486; 1 Salk. 15	156

J.

Jac—Kel	PAGE
Jackson, <i>In re</i> , (1894) W. N. 50	276
Jackson v. Barry Rail. Co., [1893] 1 Ch. 238; 68 L. T. 472; 2 R. 207	188
Jacobs, <i>In re</i> , Baldwin v. Prescott, [1908] 2 Ch. 691; 78 L. J. Ch. 24; 99 L. T. 726	276
James v. James (1889), 23 Q. B. D. 12; 58 L. J. Q. B. 424; 61 L. T. 310; 37 W. R. 600	190
Jamieson v. North British Rail. Co. (1868), 6 S. L. R. 188	137
Jary v. Barnsley Corporation, [1907] 2 Ch. 600; 76 L. J. Ch. 593; 97 L. T. 507; 71 J. P. 468; 5 L. G. R. 1145; 23 Times L. R. 689	129, 130, 343
Jersey (Earl of) v. Briton Ferry Floating Dock Co. (1869), L. R. 7 Eq. 409	63
Jervis v. Newcastle Waterworks Co. (1897), 13 Times L. R. 14, 312	141
Jesus College, Cambridge, <i>Ex parte</i> (1884), 50 L. T. 583.....	252, 255
Johnson's Settlements, <i>In re</i> (1869), L. R. 8 Eq. 348	255, 256
Johnson v. Durant (1831), 2 B. & Ad. 925; 4 C. & P. 527; 1 L. J. K. B. 47	235
Johnson v. Edgware, &c. Rail. Co. (1866), 35 L. J. Ch. 322; 14 L. T. 45; 14 W. R. 416	83
Jolliffe's Estate, <i>In re</i> (1869), L. R. 9 Eq. 668; 23 L. T. 303...263,	278
Jolly v. Wimbledon and Dorking Rail. Co. (1861), 1 B. & S. 807; 31 L. J. Q. B. 95; 5 L. T. 615; 10 W. R. 253; 6 Jur. N. S. 1037	69, 91
Jones' Trust Estate, <i>Re</i> (1870), 39 L. J. Ch. 190; 18 W. R. 312 ...	259, 276, 281
Jones and Cardiganshire C. C., <i>In re</i> (1913), 57 S. J. 374	282
Jones, <i>Ex parte</i> , <i>In re</i> Artizans', &c. Dwellings Act (1880), 14 Ch. D. 624; 43 L. T. 84	264, 265, 543, 545
Jones v. Great Western Rail. Co. (1840), 1 Rail. Cas. 684	91
Jones v. South Staffordshire Rail. Co. (1868), 19 L. T. 603	313
Jones v. Stanstead, &c. Rail. Co. (1872), L. R. 4 P. C. 98; 41 L. J. P. C. 19; 20 W. R. 417; 26 L. T. 456; 8 Moo. P. C. (N. S.) 312.	91
Jones v. Victoria Graving Dock Co. (1877), 2 Q. B. D. 314; 46 L. J. Q. B. 219; 36 L. T. 144, 347; 25 W. R. 348	54
Jordeson v. Sutton, Southcoates and Drypool Gas Co., [1899] 2 Ch. 217; 68 L. J. Ch. 457; 80 L. T. 815; 63 J. P. 692	31, 152
Jubb v. Hull Dock Co. (1846), 9 Q. B. 443; 15 L. J. Q. B. 403; 3 Rail. Cas. 795; 11 Jur. 15	116

K.

Keatley, <i>Ex parte</i> , <i>In re</i> Dublin (South) City Meat Market (1890), 25 L. R. Ir. 265	245
Keep v. St. Mary's, Newington, Vestry, [1894] 2 Q. B. 524	520
Keighley & Co. and Durant & Co., <i>In re</i> , [1893] 1 Q. B. 405; 62 L. J. Q. B. 105; 68 L. T. 61; 41 W. R. 437	197, 243
Kelland v. Fulford (1877), 6 Ch. D. 491; 47 L. J. Ch. 94; 25 W. R. 506	248, 250, 254, 256, 259

Kel—Lam

PAGE

Kelner <i>v.</i> Baxter (1866), L. R. 2 C. P. 174; 36 L. J. C. P. 94; 15 L. T. 313; 15 W. R. 278	55
Kemp <i>v.</i> London, Brighton and South Coast Rail. Co. (1839), 1 Rail. Cas. 495; 3 Jur. 403	73
Kemp <i>v.</i> South Eastern Rail. Co. (1872), L. R. 7 Ch. 364; 41 L. J. Ch. 404; 26 L. T. 110; 20 W. R. 306	31, 79, 84
Kent Coast Rail. Co., <i>Re, Ex parte</i> Dean of Canterbury (1862), 10 W. R. 505; 7 L. T. 240	256
Kerford <i>v.</i> Seacombe, &c. Rail. Co. (1888), 57 L. J. Ch. 270; 58 L. T. 445; 36 W. R. 431; 4 Times L. R. 228	38
Kilworth Rifle Range, <i>In re</i> , [1899] 2 Ir. R. 305	119
King's College, Cambridge, <i>Ex parte</i> , [1891] 1 Ch. 333, 677; 60 L. J. Ch. 508; 64 L. T. 623; 39 W. R. 331	255, 259
King's College, Cambridge <i>v.</i> Uxbridge R. D. C., [1901] 2 Ch. 768; 70 L. J. Ch. 844; 85 L. T. 303; 17 Times L. R. 762	338, 342
King's Leasehold Estates, <i>In re, Ex parte</i> East London Rail. Co. (1873), L. R. 16 Eq. 521; 29 L. T. 288; 21 W. R. 881	178
King's Lynn (Mayor of) <i>v.</i> Pemberton (1818), 1 Swanst. 244....	26
King <i>v.</i> Wycombe Rail. Co. (1860), 28 Beav. 104; 29 L. J. Ch. 462; 6 Jur. N. S. 239	37, 41, 42, 80
Kirby <i>v.</i> Harrogate School Board, [1896] 1 Ch. 437; 65 L. J. Ch. 376; 74 L. T. 6; 60 J. P. 182; 12 Times L. R. 175....125, 148, 156	
Kirkleatham Local Board and Stockton and Middlesbrough Water Board, <i>In re</i> , [1893] 1 Q. B. 375; A. C. 444; 62 L. J. Q. B. 180; 67 L. T. 811; 57 J. P. 421	194, 243
Kirksmeaton (Rector of), <i>Ex parte, In re</i> Hull Railway and Dock Act (1882), 20 Ch. D. 203; 51 L. J. Ch. 581; 30 W. R. 539....	253
Kitts <i>v.</i> Moore, [1895] 1 Q. B. 253; 64 L. J. Ch. 152; 71 L. T. 676; 43 W. R. 84	108, 172, 173
Knapp <i>v.</i> London, Chatham and Dover Rail. Co. (1863), 2 H. & C. 212; 32 L. J. Ex. 236; 8 L. T. 541; 11 W. R. 890; 9 Jur. N. S. 671	90, 232
Knight and Tabernacle Building Society, <i>In re</i> , [1892] 2 Q. B. 613; 62 L. J. Q. B. 33; 67 L. T. 403; 41 W. R. 35; 57 J. P. 229	195
Knock <i>v.</i> Metropolitan Rail. Co. (1868), L. R. 4 C. P. 131; 38 L. J. C. P. 78; 17 W. R. 10; 19 L. T. 239	144
Knowles & Son, Limited <i>v.</i> Bolton Corporation, [1900] 2 Q. B. 253; 69 L. J. Q. B. 481; 82 L. T. 229; 48 W. R. 433; 16 Times L. R. 283	340, 510
Knowles <i>v.</i> Salford Corporation, [1922] 1 Ch. 328; 38 Times L. R. 316; 66 S. J. 332	373
Knowles & Sons <i>v.</i> Lancashire and Yorkshire Rail. Co. (1889), 14 App. Cas. 248; 61 L. T. 91	128, 129, 453

L.

Laird <i>v.</i> Birkenhead Rail. Co. (1859), 29 L. J. Ch. 218; 1 Joh. 500; 6 Jur. N. S. 140; 1 L. T. 259; 8 W. R. 58	54
Laird <i>v.</i> Pim (1841), 7 M. & W. 474; 10 L. J. Ex. 259	230
Lamb <i>v.</i> North London Rail. Co. (1869), L. R. 4 Ch. 522; 21 L. T. 98; 17 W. R. 746	24

Lam—Lin	PAGE
Lambert <i>v.</i> Dublin, &c. Rail. Co. (1890), 25 L. R. Ir. 163	94
Lambton, <i>Ex parte</i> , Pile <i>v.</i> Pile (1876), 3 Ch. D. 36; 45 L. J. Ch. 841; 35 L. T. 18; 24 W. R. 1003	272, 296
Lancashire and Yorkshire Rail. Co., <i>In re</i> (1886), 55 L. T. 58	98
Lancashire and Yorkshire Rail. Co. <i>v.</i> Davenport (1906), 4 L. G. R. 425; 70 J. P. 129	23, 24, 304
Lancashire and Yorkshire Rail. Co. and Earl of Derby's Contract, <i>In re</i> (1909), 100 L. T. 44	9, 306
Lancashire and Yorkshire Rail. Co. <i>v.</i> Evans (1851), 15 Beav. 322; <i>S. C.</i> at law, 1 E. & B. 754; 22 L. J. Q. B. 254; 17 Jur. 878	5, 169
Land's Trust and Bristol and Exeter Railway Act, <i>In re</i> (1857), 4 K. & J. 81	274
Landrock <i>v.</i> Metropolitan District Rail. Co. (1886), 3 Times L. R. 162	72
Lang <i>v.</i> Kerr, Anderson & Co. (1878), 3 App. Cas. 529	7
Langford <i>v.</i> Brighton, &c. Rail. Co. (1845), 4 Rail. Cas. 69	91
Langham <i>v.</i> Great Northern Rail. Co. (1847), 1 De G. & Sm. 486; 16 L. J. Ch. 437; 5 Rail. Cas. 263	96, 99, 100, 176
Lascelles <i>v.</i> Swansea School Board (1900), 69 L. J. Q. B. 24	201
Lathropp's Charity, <i>In re</i> (1866), L. R. 1 Eq. 467; 14 W. R. 326; 13 L. T. 784; 35 Beav. 297	259
Latimer <i>v.</i> Aylesbury and Buckingham Rail. Co. (1878), 9 Ch. D. 385; 39 L. T. 460; 27 W. R. 141	62
Lavers <i>v.</i> London C. C. (1905), 93 L. T. 233; 69 J. P. 362; 3 L. G. R. 1025; 21 Times L. R. 695	41, 42, 299
Lawrence <i>v.</i> Great Northern Rail. Co. (1851), 16 Q. B. 643; 20 L. J. Q. B. 293; 6 Rail. Cas. 656; 15 Jur. 652	149, 169
Leconfield (Lord) <i>v.</i> London and North Western Rail. Co., [1907] 1 Ch. 38; 76 L. J. Ch. 33; 95 L. T. 672; 23 Times L. R. 31; 51 S. J. 27	121, 287
Lee and Hemingway, <i>In re</i> (1883), 24 Ch. D. 669; 49 L. T. 155; 32 W. R. 226	275
Lee <i>v.</i> Milner (1837), 2 M. & W. 824; 2 Y. & C. (Ex.) 611	45, 168
Leeds Corporation <i>v.</i> Ryder, [1907] A. C. 420; 76 L. J. K. B. 1032; 97 L. T. 261; 71 J. P. 484; 23 Times L. R. 721	181
Leeds Grammar School, <i>In re</i> , [1901] 1 Ch. 228; 70 L. J. Ch. 89; 83 L. T. 499; 49 W. R. 120; 65 J. P. 88	59, 271, 282
Leggott <i>v.</i> Metropolitan Rail. Co. (1870), L. R. 5 Ch. 716; 18 W. R. 1060	140
Leigh's Estate, <i>In re</i> (1871), L. R. 6 Ch. 887; 40 L. J. Ch. 687; 25 L. T. 644; 19 W. R. 1105	255, 256, 263, 276, 283
Levick <i>v.</i> Epsom, &c. Rail. Co. (1859), 1 L. T. 60	188, 189
Lewis <i>v.</i> South Wales Rail. Co. (1853), 10 Hare, 113; 22 L. J. Ch. 209; 16 Jur. 1149; 1 W. R. 45	139, 249
Lewis <i>v.</i> Weston-super-Mare Local Board (1888), 40 Ch. D. 55; 58 L. J. Ch. 39; 59 L. T. 769; 37 W. R. 121; 5 Times L. R. 1 ...	342
Lietch and Kewney, <i>Re</i> (1867), 16 L. T. 729; 15 W. R. 1055	245
Lincoln (Mayor of), <i>Ex parte</i> (1852), 21 L. J. Ch. 621; 6 Rail. Cas. 738	291
Lind <i>v.</i> Isle of Wight Ferry Co. (1862), 7 L. T. 416; 1 N. R. 13...	88, 200

Lin—Lon	PAGE
Lindsay v. Direct London and Portsmouth Rail. Co. (1850), 19 L. J. Q. B. 417; 15 Jur. 224; 1 L. M. & P. 529	199, 241
Lingké v. Christchurch Corporation, [1912] 3 K. B. 595; 82 L. J. K. B. 37; 107 L. T. 476; 76 J. P. 433; 10 L. G. R. 773; 56 S. J. 735; 28 Times L. R. 536	155, 157, 158, 341
Linlithgow (Marquess) v. North British Rail. Co., [1914] A. C. 820; [1912] S. C. 1327; [1914] S. C. (H. L.) 38	128, 137
Lippincott v. Smyth (1860), 29 L. J. Ch. 520; 6 Jur. N. S. 311; 2 L. T. 79; 8 W. R. 336	48, 51, 77
Lister's Petition, <i>In re</i> Milford Docks Co. (1883), 23 Ch. D. 292; 52 L. J. Ch. 774; 48 L. T. 560; 31 W. R. 715	230
Little Steeping (Rector of), <i>Ex parte</i> , <i>Re</i> East Lincolnshire Rail. Co. (1847), 5 Rail. Cas. 207	267
Littlewood v. Pattison (1864), 10 Jur. N. S. 875	269
Liverpool (Corporation of), <i>Ex parte</i> (1866), L. R. 1 Ch. 596; 35 L. J. Ch. 655; 14 L. T. 785; 14 W. R. 906	255
Liverpool (Mayor, &c. of) v. Chorley Waterworks Co. (1852), 2 De G. M. & G. 852	46
Liverpool (Rector of), <i>Ex parte</i> (1871), L. R. 11 Eq. 15; 41 L. J. Ch. 55; 23 L. T. 354; 19 W. R. 47	252
Liverpool Improvement Act, <i>In re</i> (1868), L. R. 5 Eq. 282; 37 L. J. Ch. 376; 16 W. R. 667	245
Liverpool and N. Wales Steamship Co., Ltd. v. Mersey Trading Co., Ltd., [1909] 1 Ch. 209; 78 L. J. Ch. 17; 99 L. T. 863; 73 J. P. 19; 25 Times L. R. 29	386
Llandrindod Wells Water Co. v. Hawksley (1903), 68 J. P. 242; 20 Times L. R. 241	198
Lloyd and North London Rail. Co., <i>In re</i> , [1896] 2 Ch. 397; 65 L. J. Ch. 626; 74 L. T. 548; 44 W. R. 522; 12 Times L. R. 432..	281, 283
Lomax, <i>Re</i> (1864), 34 Beav. 294	262
London (Bishop of), <i>Ex parte</i> (1860), 2 De G. F. & J. 14; 29 L. J. Ch. 575; 2 L. T. 365; 8 W. R. 465; 6 Jur. N. S. 640	254, 264, 283, 284
London (Corporation of), <i>Ex parte</i> (1868), L. R. 5 Eq. 418; 37 L. J. Ch. 375; 16 W. R. 355; 17 L. T. 489...253, 254, 279, 283, 284	
London (Mayor of), <i>Ex parte</i> (1883), 25 Ch. D. 384; 53 L. J. Ch. 6; 49 L. T. 437; 32 W. R. 87	251, 272
London (Mayor of), <i>Ex parte</i> , <i>In re</i> Sion College (1888), 57 L. T. 743	4
London (Mayor, &c. of) v. St. Andrew's, Holborn (1867), L. R. 2 Q. P. 574; 36 L. J. M. C. 95; 16 L. T. 665; 15 W. R. 928.....	300
London and Birmingham Rail. Co. v. Winter (1840), Cr. & Ph. 57	54
London and Blackwall Rail. Co. v. Cross (1886), 31 Ch. D. 354; 55 L. J. Ch. 313; 54 L. T. 309; 34 W. R. 201.....88, 107, 172, 173, 189, 233	
London and Blackwall Rail. Co. v. Letts (1851), 3 H. L. C. 470; 15 Jur. 995; 6 Rail. Cas. 687	10
London, Brighton and South Coast Rail. Co., <i>In re</i> , <i>Ex parte</i> Earl of Abergavenny (1856), 4 W. R. 315	249
London, Brighton and South Coast Rail. Co. v. Truman (1885), 11 App. Cas. 45; 55 L. J. Ch. 354; 54 L. T. 250; 34 W. R. 657..	31, 149, 150, 151

Lon—Lon	PAGE
London County Council, <i>Ex parte</i> , Vicar of Christchurch, East Greenwich, <i>Ex parte</i> , [1896] 1 Ch. 520; 65 L. J. Ch. 331; 74 L. T. 18; 44 W. R. 520	253
London County Council and City of London Brewery Co., <i>In re</i> , [1898] 1 Q. B. 387; 67 L. J. Q. B. 382; 77 L. T. 463; 46 W. R. 172; 61 J. P. 808; 14 Times L. R. 69	317
London County Council, <i>In re</i> , <i>Ex parte</i> Pennington (1901), 84 L. T. 808; 65 J. P. 536; 17 Times L. R. 614	252, 255, 267
London County Council v. Port of London Authority, [1914] 2 Ch. 362; 84 L. J. Ch. 20; 12 L. G. R. 911; 30 T. L. R. 406	347
London County Council v. Wilson's Executors, [1916] 1 K. B. 837; 85 L. J. K. B. 898; 114 L. T. 852; 80 J. P. 252; 14 L. G. R. 590	68, 81, 355, 356, 358
London and Greenwich Rail. Co. v. Goodchild (1844), 3 Rail. Cas. 507; 8 Jur. 455; 13 L. J. Ch. 224	312
London and North Western Rail. Co., <i>Ex parte</i> , <i>In re</i> Smith (1888), 40 Ch. D. 386; 58 L. J. Ch. 108; 60 L. T. 77; 37 W. R. 199	257, 261
London and North Western Rail. Co., <i>In re</i> (1872), 26 L. T. 687; 1 W. R. 60	97
London and North Western Rail. Co. v. Ackroyd (1862), 31 L. J. Ch. 588; 10 W. R. 367; 8 Jur. N. S. 911; 6 L. T. 124	133
London and North Western Rail. Co. v. Evans, [1893] 1 Ch. 16; 62 L. J. Ch. 1; 67 L. T. 630; 41 W. R. 149	95, 129, 453
London and North Western Rail. Co. v. Lancaster (Corporation of) (1851), 15 Beav. 22	249
London and North Western Rail. Co. v. Ogwen District Council (1899), 80 L. T. 401; 63 J. P. 295; 15 Times L. R. 291	444
London and North Western Rail. Co. v. Quick (1848), 5 D. & L. 685; 18 L. J. Q. B. 89	202
London and North Western Rail. Co. and Reddaway, <i>In re</i> (1907), 71 J. P. 150; 23 Times L. R. 279	163
London and North Western Rail. Co. v. Runcorn Rural District Council, [1898] 1 Ch. 34, 561; 67 L. J. Ch. 23, 324; 78 L. T. 343; 46 W. R. 484; 62 J. P. 643	385, 450
London and North Western Rail. Co. v. Walker, [1900] A. C. 109; 69 L. J. Q. B. 367; 82 L. T. 93; 48 W. R. 384; 64 J. P. 483; 16 Times L. R. 194	197
London and North Western Rail. Co. v. Walker, [1903] A. C. 289; 72 L. J. K. B. 578; 88 L. T. 705; 19 Times L. R. 519	128
London and North Western Rail. Co. v. West (1867), L. R. 2 C. P. 553; 36 L. J. C. P. 245	310
London School Board and Foster, <i>In re</i> (1903), 87 L. T. 700	11, 73
London (School Board for), <i>Ex parte</i> (1892), <i>The Times</i> , 1 March, 1892	215, 218
London (School Board for) v. South Eastern Rail. Co. (1887), 3 Times L. R. 710	115
London and South Western Rail. Co., <i>Ex parte</i> (1869), 38 L. J. Ch. 527	99, 175, 271
London and South Western Rail. Co. v. Blackmore (1870), L. R. 4 H. L. 610; 39 L. J. Ch. 713; 23 L. T. 504; 19 W. R. 305	44, 307, 310, 311, 312, 313

Lon—Lyt

PAGE

London and South Western Rail. Co. <i>v.</i> Gomm (1882), 20 Ch. D. 562; 51 L. J. Ch. 530; 46 L. T. 449; 30 W. R. 620 ...	138, 309, 314
London Street, Greenwich, <i>Re</i> (1888), 57 L. T. 673	253, 264
London, Tilbury and Southend Rail. Co., <i>Ex parte</i> (1852), 1 W. R. 533	98
London, Tilbury and Southend Rail. Co. and Gower's Walk Schools, <i>In re</i> (1889), 24 Q. B. D. 40, 326; 59 L. J. Q. B. 162; 62 L. T. 306; 38 W. R. 343	14, 145, 152, 153, 165, 358
London United Tramways Act, 1900, <i>In re</i> , [1906] 1 Ch. 534; 75 L. J. Ch. 223; 94 L. T. 608; 54 W. R. 328; 22 Times L. R. 286...	246
Long's Estate, <i>In re</i> (1852), 1 W. R. 226; 20 L. T. (O. S.) 305 ...	278
Long <i>v.</i> Great Northern and City Rail. Co., [1902] 1 K. B. 813; 71 L. J. K. B. 598; 86 L. T. 440; 50 W. R. 402	220
Long Eaton Recreation Grounds Co. <i>v.</i> Midland Rail. Co., [1902] 2 K. B. 574; 71 L. J. K. B. 837; 86 L. T. 873; 50 W. R. 693; 67 J. P. 1; 18 Times L. R. 743	125, 156
Loosemore <i>v.</i> Tiverton, &c. Rail. Co. (1882), 22 Ch. D. 25; 52 L. J. Ch. 260; 47 L. T. 151; 30 W. R. 628 (<i>and see</i> Tiverton, &c. Rail. Co. <i>v.</i> Loosemore)	41, 93, 137, 247, 383
Loughton (Rector of), <i>Ex parte, Re</i> London and Birmingham Rail. Co. (1849), 5 Rail. Cas. 591; 14 Jur. 102	250
Louth and East Coast Rail. Co., <i>In re, Ex parte</i> Rector of Grimoldby (1876), 2 Ch. D. 225; 24 W. R. 723	255
Lovering <i>v.</i> City of London, &c. Subway Co. (1891), 7 Times L. R. 301, 600	75, 186, 232, 235
Low <i>v.</i> Staines Reservoirs Joint Committee (1900), 64 J. P. 212; 16 Times L. R. 184	37
Lowestoft (Manor of) and Great Eastern Rail. Co., <i>In re, Ex parte</i> Reeve (1883), 24 Ch. D. 253; 52 L. J. Ch. 912; 49 L. T. 523; 32 W. R. 309	48, 273
Lowry's Will, <i>In re</i> (1872), L. R. 15 Eq. 78; 42 L. J. Ch. 509; 21 W. R. 428	51
Lowther <i>v.</i> Caledonian Rail. Co., [1892] 1 Ch. 73; 61 L. J. Ch. 108; 40 W. R. 225; 8 Times L. R. 149	121, 286, 287, 288
Lucas and Chesterfield Gas and Water Board, <i>In re</i> , [1909] 1 K. B. 16; 77 L. J. K. B. 1009; 99 L. T. 767; 72 J. P. 437; 6 L. G. R. 1106; 24 Times L. R. 858 ...	108, 109, 110, 111, 323, 324
Ludlow Corporation <i>v.</i> Prosser (1906), 70 J. P. 400; 4 L. G. R. 940; 22 Times L. R. 597	189, 340
Lurgan Urban District Council, <i>Ex parte, In re</i> Kearns, [1902] 1 Ir. R. 157	281
Lycett <i>v.</i> Stafford and Uttoxeter Rail. Co. (1872), L. R. 13 Eq. 261; 41 L. J. Ch. 474	61
Lye's Estates, <i>Re</i> (1866), 13 L. T. 664	276
Lynch <i>v.</i> Commissioners of Sewers for City of London (1886), 32 Ch. D. 72; 55 L. J. Ch. 409; 54 L. T. 699; 50 J. P. 548 ...	68, 105, 350, 351, 352
Lynch <i>v.</i> Glasgow Corporation (1904), 5 F. (Ct. of Sess.) 1174...	123, 124
Lynn and Fakenham Railway Extension Act, <i>In re</i> (1909), 100 L. T. 432; 73 J. P. 163	281, 283
Lyon <i>v.</i> Fishmongers' Co. (1876), 1 App. Cas. 662; 46 L. J. Ch. 68; 35 L. T. 569; 25 W. R. 165	155
Lytton <i>v.</i> Great Northern Rail. Co. (1855), 2 K. & J. 394; 2 Jur. N. S. 436; 4 W. R. 441	60

M.		PAGE
Mac—Mas		
Macauley, <i>Ex parte</i> , <i>In re</i> Lancashire and Yorkshire Rail. Co. (1854), 23 L. J. Ch. 815; 2 W. R. 667	254,	261
McCarthy v. Metropolitan Board of Works (1872), L. R. 7 C. P. 508; 42 L. J. C. P. 81; 26 L. T. 772 (<i>and see</i> Metropolitan Board of Works v. McCarthy)	148	
Macey v. Metropolitan Board of Works (1864), 33 L. J. Ch. 377; 10 L. T. 66; 12 W. R. 691; 10 Jur. N. S. 333...13, 92, 142, 155, 168		
Macfie v. Callander and Oban Rail. Co., [1898] A. C. 270; 67 L. J. P. C. 58; 78 L. T. 598	307	
MacGregor v. Metropolitan Rail. Co. (1866), 14 L. T. 354	37	
Mackenzie and Ascot Gas Co., <i>In re</i> (1886), 17 Q. B. D. 114; 55 L. J. Q. B. 309; 34 W. R. 487	340,	510
Madgwick, <i>In re</i> (1883), 25 Ch. D. 371; 53 L. J. Ch. 333; 49 L. T. 560; 32 W. R. 512	251	
Magdalen College, Oxford, <i>Re</i> (1880), 42 L. T. 822	253	
Magdalen College, Oxford, <i>In re</i> , [1901] 2 Ch. 786; 70 L. J. Ch. 821; 85 L. T. 479; 50 W. R. 90; 66 J. P. 23	278,	281
Maidstone and Ashford Rail. Co., <i>Ex parte</i> (1883), 25 Ch. D. 168; 53 L. J. Ch. 127; 49 L. T. 777; 32 W. R. 181	251	
Malmesbury Rail. Co. v. Budd (1876), 2 Ch. D. 113; 45 L. J. Ch. 271	172,	188, 189
Manchester (Dean of), <i>Ex parte</i> (1873), 28 L. T. 184	279	
Manchester and Leeds Rail. Co., <i>In re</i> , <i>Ex parte</i> Gaskell (1876), 2 Ch. D. 360; 45 L. J. Ch. 368; 24 W. R. 752	283,	284
Manchester and Milford Rail. Co., <i>In re</i> , <i>Ex parte</i> Cambrian Rail. Co. (1880), 14 Ch. D. 645; 49 L. J. Ch. 454; 42 L. T. 714	63	
Manchester, Sheffield and Lincolnshire Rail. Co. v. Anderson, [1898] 2 Ch. 394; 67 L. J. Ch. 568; 78 L. T. 821; 14 Times L. R. 317, 489	125,	156
Manning v. Eastern Counties Rail. Co. (1844), 12 M. & W. 237; 13 L. J. Ex. 265; 3 Rail. Cas. 637	214,	452
Mappin Bros. v. Liberty & Co., [1903] 1 Ch. 118; 87 L. T. 523; 72 L. J. Ch. 63	72	
Marriage, <i>Re</i> (1861), 9 W. R. 843	272	
Marriott v. East Grinstead Gas and Water Co., [1909] 1 Ch. 70; 72 J. P. 509; 25 Times L. R. 59	27,	45
Marson v. London, Chatham and Dover Rail. Co. (1868), L. R. 6 Eq. 101; 37 L. J. Ch. 483; 18 L. T. 319; (1869), L. R. 7 Eq. 546; 38 L. J. Ch. 371	38,	43
Martin v. Leicester Waterworks Co. (1858), 3 H. & N. 463; 27 L. J. Ex. 432	190,	201
Martin v. London, Chatham and Dover Rail. Co. (1866), L. R. 1 Ch. 501; 35 L. J. Ch. 795; 12 Jur. N. S. 775; 14 L. T. 814; 14 W. R. 880	61,	67, 69, 75, 97, 296
Martin v. London County Council (1898-9), 79 L. T. 170; 80 L. T. 866	149,	156
Maryport Railway Act, <i>Re</i> (1863), 32 Beav. 397	284	
Mason v. Stokes Bay Pier, &c. Co. (1863), 32 L. J. Ch. 110; 11 W. R. 80	57,	228
Mason's Orphanage and London and North Western Rail. Co., <i>In re</i> , [1896] 1 Ch. 596; 65 L. J. Ch. 439; 74 L. T. 161; 44 W. R. 339	50,	59, 257

Mas—Met

PAGE

Masters and Great Western Rail. Co., <i>In re</i> , [1901] 2 K. B. 84; 70 L. J. K. B. 516; 84 L. T. 515; 49 W. R. 499; 65 J. P. 420 ...	11, 125, 126
Matthews v. Wilson, (1883) W. N. 111	256
Matthey v. Carling (1922), 38 Times L. R. 475	57, 126, 336
Maunder, <i>Re</i> (1883), 49 L. T. 535	212, 240
Melling v. Bird (1853), 17 Jur. 155; 22 L. J. Ch. 599; 1 W. R. 219	281
Melward, <i>Ex parte</i> , <i>In re</i> Oxford, Worcester, &c. Rail. Co. (1860), 27 Beav. 571; 29 L. J. Ch. 245; 6 Jur. N. S. 478; 1 L. T. 153...	256
Mercer v. Liverpool, St. Helens and S. Lancashire Rail. Co., [1903] 1 K. B. 652; [1904] A. C. 461; 72 L. J. K. B. 128; 73 L. J. K. B. 960; 88 L. T. 374; 91 L. T. 605; 68 J. P. 533; 53 W. R. 241; 20 Times L. R. 673	81, 83, 84, 168
Merceron, <i>In re</i> (1877), 7 Ch. D. 184; 47 L. J. Ch. 114; 38 L. T. 15; 26 W. R. 187	262, 274, 277, 278
Mercers' Co., <i>Ex parte</i> (1878), 10 Ch. D. 481; 48 L. J. Ch. 384; 27 W. R. 424	275
Merchant Taylors' Co., <i>In re</i> (1885), 30 Ch. D. 28; 29 Ch. D. 209; 54 L. J. Ch. 867; 52 L. T. 775; 33 W. R. 542, 693	247, 256
Merrett, <i>Ex parte</i> (1859), 2 L. T. 471	123, 179
Metropolitan Asylum District v. Hill (1881), 6 App. Cas. 193; 50 L. J. Q. B. 353; 44 L. T. 653; 29 W. R. 617; 45 J. P. 664	31
Metropolitan Board of Works v. Howard (1889), 5 Times L. R. 732	156, 158, 159
Metropolitan Board of Works v. McCarthy (1874), L. R. 7 H. L. 243; 43 L. J. C. P. 385; 23 W. R. 115; 31 L. T. 187 (<i>and see</i> McCarthy v. Metropolitan Board of Works)	150, 151, 152, 155, 157, 159
Metropolitan Board of Works v. Metropolitan Rail. Co. (1868-9), L. R. 3 C. P. 612; 4 C. P. 192; 32 L. J. C. P. 281; 19 L. T. 744; 16 W. R. 1117; 17 W. R. 416	115, 129, 131, 153, 347
Metropolitan District Rail. Co. and Cosh, <i>In re</i> (1880), 13 Ch. D. 607; 49 L. J. Ch. 277; 42 L. T. 73; 28 W. R. 685	9, 303, 304, 306, 309
Metropolitan District Rail. Co. v. Sharpe (1880), 5 App. Cas. 425; 50 L. J. Q. B. 14; 43 L. T. 617; 29 W. R. 617; 44 J. P. 716...	5, 203, 218
Metropolitan Rail. Co., <i>Ex parte</i> (1868), 16 W. R. 996	264
Metropolitan and Metropolitan District Rail. Cos. v. Burrow (1884), <i>The Times</i> , 22 Nov.	115, 117, 118
Metropolitan Rail. Co. v. Fowler, [1893] A. C. 416; 62 L. J. Q. B. 553; 69 L. T. 390; 42 W. R. 270; 57 J. P. 756	11, 18, 93, 104
Metropolitan Rail. Co. v. Turnham (1863), 14 C. B. N. S. 212; 32 L. J. M. C. 249; 8 L. T. 280; 11 W. R. 695	209, 218
Metropolitan Rail. Co. v. Woodhouse (1865), 34 L. J. Ch. 297; 12 L. T. 113; 13 W. R. 516; 11 Jur. N. S. 296	83
Metropolitan Water Board v. Berton (<i>or</i> Dulwich College), [1921] 1 Ch. 299; 90 L. J. Ch. 57; 36 Times L. R. 834; 18 L. G. R. 766	320, 383
Metropolitan Water Board v. London, Brighton and South Coast Rail. Co., [1915] 2 K. B. 297; 84 L. J. K. B. 1216; 113 L. T. 30; 79 J. P. 337; 13 L. G. R. 576	343

Met—Mor	PAGE
Mette's Estate, <i>In re</i> (1869), L. R. 7 Eq. 72; 38 L. J. Ch. 445 ...	268
Middlesex (County of) Light Railways Order, 1903, <i>In re</i> , [1908] W. N. 167	247
Midland Rail. Co., <i>Ex parte</i> , [1904] 1 Ch. 61; 73 L. J. Ch. 64; 89 L. T. 545; 20 Times L. R. 72	98
Midland Rail. Co. v. Checkley (1867), L. R. 4 Eq. 19; 36 L. J. Ch. 380; 16 L. T. 260; 15 W. R. 671	137
Midland Rail. Co. v. Great Western Rail. Co., [1908] 2 Ch. 644; [1909] A. C. 445; 78 L. J. Ch. 686; 101 L. T. 142; 53 S. J. 671	28, 84, 90, 138
Midland Rail. Co. v. Haunchwood Brick and Tile Co. (1882), 20 Ch. D. 552; 51 L. J. Ch. 778; 47 L. T. 151; 30 W. R. 628	137
Midland Rail. Co. and Heming, <i>Re</i> (1847), 11 Jur. 904	191
Midland Rail. Co. v. Miles (1885), 30 Ch. D. 634; 55 L. J. Ch. 251; 53 L. T. 381; 34 W. R. 136	135
Midland Rail. Co. v. Miles (1886), 33 Ch. D. 632; 55 L. J. Ch. 745; 55 L. T. 428; 35 W. R. 76	135, 137
Midland Rail. Co. v. Robinson (1887), 37 Ch. D. 381; (1890), 15 App. Cas. 19; 59 L. J. Ch. 442; 62 L. T. 194; 38 W. R. 577 ...	127, 133, 136, 137
Midland Rail. Co. v. Wright, [1901] 1 Ch. 738; 70 L. J. Ch. 411; 84 L. T. 225; 49 W. R. 474; 17 Times L. R. 261	138, 306
Midwood & Co., Ltd. v. Manchester Corporation, [1905] 2 K. B. 597; 74 L. J. K. B. 884; 93 L. T. 525; 54 W. R. 37; 69 J. P. 348; 3 L. G. R. 1136; 21 Times L. R. 667	32
Miles v. Great Western Rail. Co., [1896] 2 Q. B. 432; 65 L. J. Q. B. 649; 75 L. T. 290	200, 201
Milford Docks Co., <i>In re</i> , Lister's Petition (1883), 23 Ch. D. 292; 52 L. J. Ch. 774; 48 L. T. 560; 31 W. R. 715	230
Miller v. Waterford Harbour Commissioners, [1904] 2 Ir. R. 241 ...	310
Mills' Estate, <i>In re</i> (1886), 34 Ch. D. 24; 56 L. J. Ch. 60; 55 L. T. 465; 35 W. R. 65; 51 J. P. 151	6, 274, 275
Mills v. East London Union (1872), L. R. 8 C. P. 79; 42 L. J. C. P. 46; 27 L. T. 557; 21 W. R. 142	127
Milnes, <i>In re</i> (1875), 1 Ch. D. 28; 34 L. T. 46; 24 W. R. 98	249
Milnes v. Gery (1807), 14 Ves. 400; 9 R. R. 307	60
Milward, <i>Ex parte</i> , <i>In re</i> Oxford, Worcester, &c. Rail. Co. (1860), 27 Beav. 571; 29 L. J. Ch. 245; 6 Jur. N. S. 478; 1 L. T. 153 ...	256
Montgomery, Jones & Co. and Liebenthal & Co., <i>In re</i> (1898), 78 L. T. 406	195, 197, 243
Moody v. Corbett (1866), L. R. 1 Q. B. 510; 5 B. & S. 859; 35 L. J. Q. B. 161; 34 L. J. Q. B. 166; 14 W. R. 737	305, 307, 309, 310, 311
Moody v. London, Brighton and South Coast Rail. Co. (1861), 1 B. & S. 295; 31 L. J. Q. B. 54; 9 W. R. 780	307
Mordue v. Durham (Dean of) (1873), L. R. 8 C. P. 336; 42 L. J. C. P. 114; 28 L. T. 593	454
Morgan and London and North Western Rail. Co., <i>In re</i> , [1896] 2 Q. B. 469; 66 L. J. Q. B. 30; 75 L. T. 226; 45 W. R. 176; 12 Times L. R. 632	83, 125
Morgan, <i>In re</i> , Smith v. May, [1900] 2 Ch. 474; 69 L. J. Ch. 735; 48 W. R. 670	257

Mor—Net	PAGE
Morgan v. Metropolitan Rail. Co. (1868), L. R. 3 C. P. 553; 4 C. P. 97; 37 L. J. C. P. 265; 38 L. J. C. P. 87; 18 L. T. 568; 19 L. T. 655; 17 W. R. 261	68, 80, 87, 179, 207
Morgan v. Milman (1852), 3 De G. M. & G. 24; 17 Jur. 193	60
Morris, <i>Ex parte</i> (1871), L. R. 12 Eq. 418; 40 L. J. Ch. 543; 25 L. T. 20; 19 W. R. 943	98, 177, 274
Morris's Settled Estates, <i>In re</i> (1875), L. R. 20 Eq. 470; 45 L. J. Ch. 63; 23 W. R. 851	264
Morris v. Tottenham, &c. Rail. Co., [1892] 2 Ch. 47; 61 L. J. Ch. 215; 66 L. T. 585; 40 W. R. 310; 8 Times L. R. 286	33
Morrison v. Great Eastern Rail. Co. (1885), 53 L. T. 384; 1 Times L. R. 658	80, 205, 208, 221, 223
Mortimer v. South Wales Rail. Co. (1859), 1 E. & E. 375; 28 L. J. Q. B. 129; 7 W. R. 292; 32 L. T. (O. S.) 270; 5 Jur. N. S. 784	152, 225, 232, 234
Mulliner v. Midland Rail. Co. (1879), 11 Ch. D. 611; 48 L. J. Ch. 258; 40 L. T. 121; 27 W. R. 330	23, 303, 304, 306
Municipal Freehold Land Co. v. Metropolitan Rail. Co. (1883), 1 Cab. & Ell. 184	124
Munns v. Isle of Wight Rail. Co. (1870), L. R. 5 Ch. 414; 39 L. J. Ch. 522; 23 L. T. 96; 18 W. R. 781	61, 102, 230
Murray v. Dalton (1920), 90 L. J. K. B. 401; 37 Times L. R. 234; 124 L. T. 762	243
Mutlow's Estate, <i>In re</i> (1879), 10 Ch. D. 131; 48 L. J. Ch. 198; 27 W. R. 245	98, 231

N.

Nadin, <i>Ex parte</i> (1848), 17 L. J. Ch. 421	123, 179
Nash's Estate, <i>In re</i> (1855), 4 W. R. 111	245
Nash v. Coombs (1867), L. R. 6 Eq. 51; 37 L. J. Ch. 600; 16 W. R. 663	291, 292
Nash v. Nash (1868), 37 L. J. Ch. 927; 16 W. R. 1105	252
Natal Land, &c. Co. v. Pauline, &c. Syndicate, [1904] A. C. 120; 73 L. J. P. C. 22; 89 L. T. 678	55
Navan and King's Court Rail. Co. and Fingall, <i>In Re</i> , [1906] 1 Ir. R. 557	281
Neale v. Ledger (1812), 16 East, 51	193
Neath and Brecon Rail. Co., <i>Ex parte</i> (1876), 2 Ch. D. 201; 45 L. J. Ch. 196; 24 W. R. 357	95
Neath and Brecon Rail. Co., <i>In re</i> (1874), L. R. 9 Ch. 263; 43 L. J. Ch. 277; 30 L. T. 3; 22 W. R. 242	97, 274
Ned's Point Battery, <i>In re</i> , [1903] 2 Ir. R. 192	335
Nepton's Charity, <i>In re</i> (1906), 22 Times L. R. 442	263, 277
Nether Stowey Vicarage, <i>In re</i> (1873), L. R. 17 Eq. 156; 29 L. T. 604; 22 W. R. 180	255

New—Nut	PAGE
Newbold and Metropolitan Rail. Co., <i>Re</i> (1863), 14 C. B. N. S. 405	187, 198, 231, 233, 344
New Moss Colliery, Limited <i>v.</i> Manchester Corporation, [1908] A. C. 117; 77 L. J. Ch. 392; 98 L. T. 467; 72 J. P. 169; 6 L. G. R. 809; 24 Times L. R. 386	132, 135
New Moss Colliery Co. <i>v.</i> Manchester, Sheffield and Lincolnshire Rail. Co., [1897] 1 Ch. 725; 66 L. J. Ch. 381; 76 L. T. 231; 45 W. R. 493	128
New River Co. <i>v.</i> Johnson (1860), 29 L. J. M. C. 93; 2 E. & E. 435; 6 Jur. N. S. 374; 1 L. T. 295; 8 W. R. 179	154
New River Co. <i>v.</i> Midland Rail. Co. (1877), 36 L. T. 539; 25 W. R. 502	220
Newton Heath (Rector of), <i>Ex parte</i> (1896), 44 W. R. 645	255
Nock <i>v.</i> Nock, (1879) W. N. 125	281
Norfolk Clergy (Governors, &c. of), <i>Ex parte</i> , (1882) W. N. 53 ...	257
Norfolk (Duke of) <i>v.</i> Tennant (1852), 9 Hare, 746; 19 L. T. (O. S.) 225; 16 Jur. 398	102
North British Rail. Co. <i>v.</i> Birrell's Trustees, [1918] S. C. (H. L.) 33	309, 314
North British Rail. Co. <i>v.</i> Budhill Coal and Sandstone Co., [1910] A. C. 116; [1909] S. C. 277; 79 L. J. P. C. 31; 101 L. T. 609; 54 S. J. 79; 26 Times L. R. 79	133, 136, 137, 138
North British Rail. Co. <i>v.</i> Tod (1846), 12 Cl. & F. 722; 4 Rail. Cas. 449; 10 Jur. 975	17, 23
North British Rail. Co. <i>v.</i> Turners, Ltd. (1904), 6 F. (Ct. of Sess.) 900	95, 129, 137
North Eastern Rail. Co. <i>v.</i> Crosland (1863), 32 L. J. Ch. 353; 11 W. R. 83; 4 De G. F. & J. 550; 7 L. T. 765	129
North London Rail. Co. <i>v.</i> Great Northern Rail. Co. (1883), 11 Q. B. D. 30; 52 L. J. Q. B. 380; 48 L. T. 695; 31 W. R. 490... ..	88, 108, 172
North London Rail. Co. <i>v.</i> Metropolitan Board of Works (1859), 28 L. J. Ch. 909; 1 Joh. 405; 5 Jur. N. S. 1121; 7 W. R. 640. 25, 93, 131, 343, 347, 349	
North Shore Rail. Co. <i>v.</i> Pion (1889), 14 App. Cas. 612; 61 L. T. 525; 59 L. J. P. C. 25	91, 155
North Staffordshire Rail. Co. and Landor, <i>Re</i> (1848), 2 Ex. 235; 17 L. J. Ex. 350; 6 Rail. Cas. 17	186, 194, 242
North Staffordshire Rail. Co. <i>v.</i> Wood (1848), 2 Ex. 244; 17 L. J. Ex. 354	194, 242
Northumberland (Duke) and Tynemouth Corporation, <i>In re</i> , [1909] 2 K. B. 374; 78 L. J. K. B. 767; 100 L. T. 930; 73 J. P. 326... ..	120, 121, 140, 286, 287
Northwick, <i>Ex parte</i> (1834), 1 Y. & C. (Ex.) 166	253
Norton <i>v.</i> London and North Western Rail. Co. (1878-9), 9 Ch. D. 623; 13 Ch. D. 268; 41 L. T. 429; 28 W. R. 173...138, 303, 307, 309	
Notley <i>v.</i> Palmer (1866), L. R. 1 Eq. 241	259
Nuttall and Lynton and Barnstaple Rail. Co., <i>In re</i> (1900), 82 L. T. 17	195
Nutter <i>v.</i> Accrington Local Board (1879), 4 Q. B. D. 375; 48 L. J. Q. B. 487; 40 L. T. 802; affirmed, (H. L.) 43 L. T. 710...341, 511	

O.

Odl--Par	PAGE
Odium v. City of Vancouver (1915), 85 L. J. P. C. 95; 113 L. T. 795	110, 164
Olive's Estate, <i>In re</i> (1890), 44 Ch. D. 316; 59 L. J. Ch. 360; 62 L. T. 626; 38 W. R. 459	276, 277, 283
Oliver's Claim, <i>In re</i> East London Rail. Co. (1890), 24 Q. B. D. 507; 38 W. R. 312; 63 L. T. 147	189, 219, 220
Oliver and Scott's Arbitration, <i>Re</i> (1890), 43 Ch. D. 310; 59 L. J. Ch. 148; 61 L. T. 552; 38 W. R. 476	243
Omagh U. C. v. Henderson, [1907] 2 Ir. R. 310	69
Onslow v. Manchester, Sheffield and Lincolnshire Rail. Co. (1895), 64 L. J. Ch. 355; 72 L. T. 256	304
Ormrod's Settled Estate, <i>In re</i> , [1892] 2 Ch. 318; 61 L. J. Ch. 651; 66 L. T. 845; 40 W. R. 490	267
O'Rourke v. Commissioner for Railways (1890), 15 App. Cas. 371; 59 L. J. P. C. 72; 63 L. T. 66	199, 236
Osbaldiston, <i>Ex parte</i> , <i>In re</i> Manchester and Leeds Rail. Co. (1849), 8 Hare, 31	276
Ossalinski (Countess) and Manchester Corporation, <i>In re</i> (1883), Browne and Allan's Law of Compensation, 2nd ed., p. 659	110
Ostler v. Cooke (1849), 13 Q. B. 143; 18 L. J. Q. B. 185	214
Owen v. London and North Western Rail. Co. (1867), L. R. 3 Q. B. 54; 37 L. J. Q. B. 35; 17 L. T. 210; 16 W. R. 125; 7 B. & S. 758	203, 218
Oxford (The), Ltd. v. London County Council, [1898] 2 Ch. 491; 79 L. T. 22; 67 L. J. Ch. 655	316
Oxford, Worcester, &c. Rail. Co., <i>In re</i> , <i>Ex parte</i> Melward (<i>or</i> Milward) (1860), 29 L. J. Ch. 245; 27 Beav. 571; 6 Jur. N. S. 478; 1 L. T. 153	256

P.

Page v. Kettering Waterworks Co. (1892), 8 Times L. R. 228...15,	152
Palmer, <i>Ex parte</i> (1849), 13 Jur. 781	282
Palmer & Co. and Hosken & Co., <i>In re</i> , [1898] 1 Q. B. 131; 77 L. T. 350; 67 L. J. Q. B. 1; 46 W. R. 49; 14 Times L. R. 28	190, 195, 242, 243
Palmer v. Metropolitan Rail. Co. (1862), 31 L. J. Q. B. 259; 10 W. R. 714	189, 196, 242
Parkdale Corporation v. West (1887), 12 App. Cas. 602; 56 L. J. P. C. 66; 57 L. T. 602	91, 171
Parker's Estate, <i>In re</i> (1872), L. R. 13 Eq. 495; 41 L. J. Ch. 473; 26 L. T. 12; 20 W. R. 289	279
Parker v. Great Western Rail. Co. (1844), 7 Macn. & G. 253; 7 Scott, N. R. 835; 13 L. J. C. P. 105; 3 Rail. Cas. 563	25
Parry and Jones, <i>In re</i> (1869), 18 W. R. 416	63
Parry v. Mayor, &c. of Hammersmith (1904), 21 Times L. R. 56; 69 J. P. 35; 3 L. G. R. 95; 92 L. T. 161	350, 351
Partington's Trusts, <i>Re</i> (1863), 11 W. R. 160	254

Pas—Pig	PAGE
Pastoral Finance Association, Ltd. v. The Minister, [1914] A. C. 1083; 84 L. J. P. O. 26; 111 L. T. 1047	108
Pattison's Estates, <i>In re</i> (1876), 4 Ch. D. 207	265
Payne (Doe d.) v. Bristol and Exeter Rail. Co. (1840), 6 M. & W. 320; 2 Rail. Cas. 75	18, 21, 22, 214
Payne v. Esdaile (1888), 13 App. Cas. 613; 58 L. J. Ch. 299; 59 L. T. 568; 37 W. R. 273; 53 J. P. 100	10, 76
Peake v. Finchley Local Board, (1887) W. N. 203; 57 L. T. 882... 344, 510	344, 510
Pearson v. Great Northern Rail. Co. (1869), L. R. 7 Q. B. 785, n.; 18 W. R. 259	216
Pearson and Great Western Rail. Co., <i>In re</i> (1904), C. A., Feb. 15th, not reported	195
Peckham, &c. Tramways Bill, <i>In re</i> , [1910] 2 Ch. 1; 79 L. J. Ch. 451; 102 L. T. 689; 74 J. P. 266; 8 L. G. R. 571; 54 S. J. 458	384
Pell v. Northampton, &c. Rail. Co. (1867), L. R. 2 Ch. 100; 36 L. J. Ch. 319; 15 L. T. 169; 15 W. R. 27	61
Penny v. Penny (1868), L. R. 5 Eq. 227; 37 L. J. Ch. 340; 18 L. T. 13; 16 W. R. 671	81, 109, 124, 126
Penny and South Eastern Rail. Co., <i>Re</i> (1857), 7 E. & B. 660; 26 L. J. Q. B. 225; 29 L. T. (O. S.) 124; 5 W. R. 193; 3 Jur. N. S. 957.....	150, 154, 158, 214, 222, 237, 238, 239, 240
Percival v. Peterborough Corporation, [1921] 1 K. B. 414; 90 L. J. K. B. 184; 124 L. T. 240; 85 J. P. 77; 65 S. J. 60.....	324
Perkes' Estate, <i>Re</i> (1853), 1 Sm. & Giff. 545; 2 W. R. 24; 7 Rail. Cas. 605	272
Perks v. Wycombe Rail. Co. (1862), 3 Giff. 662; 8 Jur. N. S. 1051; 7 L. T. 150; 10 W. R. 788	67, 102
Perry v. Clissold, [1907] A. C. 73; 76 L. J. P. C. 19; 95 L. T. 890; 23 Times L. R. 232	273
Perry's (or Sterry's) Estate, <i>Re</i> (1855), 1 Jur. N. S. 917; 3 W. R. 561	274
Pescod v. Westminster Corporation, [1905] 2 Ch. 475; 74 L. J. Ch. 664; 93 L. T. 160; 54 W. R. 89; 69 J. P. 387; 3 L. G. R. 1272; 21 Times L. R. 743	351, 352
Peters v. Lewes and East Grinstead Rail. Co. (1881), 18 Ch. D. 429; 50 L. J. Ch. 839; 45 L. T. 234; 29 W. R. 422, 875... 49, 50, 58, 77, 174, 177, 244	49, 50, 58, 77, 174, 177, 244
Petition of Right, <i>In re</i> A (The Shoreham Aerodrome Case), [1915] 3 K. B. 649; 54 L. J. K. B. 1961; 113 L. T. 575; 115 L. T. 419; 60 S. J. 694; 32 Times L. R. 699	334
Pettward and Metropolitan Board of Works, <i>In re</i> (1865), 34 L. J. C. P. 301; 12 L. T. 764; 11 Jur. N. S. 932; 19 C. B. N. S. 489..	131
Pfleger, <i>In re</i> (1868), L. R. 6 Eq. 426	268
Phillips' Trusts, <i>In re</i> (1868), L. R. 6 Eq. 250	269
Phillips, <i>Ex parte</i> (1862), 3 De G. J. & S. 341; 32 L. J. Ch. 102... 245	245
Phillips v. London, Brighton and South Coast Rail. Co. (1862), 4 Giff. 46	444
Pickering v. Cape Town Rail. Co. (1865), L. R. 1 Eq. 84	172, 188
Piggin, <i>In re</i> , <i>Ex parte</i> Mansfield Rail. Co., [1913] 2 Ch. 326; 82 L. J. Ch. 431; 108 L. T. 1014	263, 264, 265

Fig—Qui	PAGE
Pigott and Great Western Rail. Co., <i>In re</i> (1881), 18 Ch. D. 146; 50 L. J. Ch. 679; 44 L. T. 792; 29 W. R. 727.....	50, 51, 57, 75, 77, 139, 228, 244
Pile v. Pile, <i>Ex parte</i> Lambton (1876), 3 Ch. D. 36; 45 L. J. Ch. 841; 35 L. T. 18; 24 W. R. 1003	272, 296
Pinchin v. London and Blackwall Rail. Co. (1854), 1 K. & J. 34; 2 Eq. Rep. 1172; 3 W. R. 52; (1855), 5 De G. M. & G. 851; 24 L. J. Ch. 417; 1 Jur. N. S. 241	9, 11, 14, 15, 17, 40, 42, 206
Pole v. Pole (1865), 2 Dr. & Sm. 420; 13 W. R. 648	266
Pollard v. Middlesex C. C. (1906), 95 L. T. 870; 71 J. P. 85; 5 L. G. R. 37	41, 56
Poplar District Local Board v. Knight (1858), 28 L. J. M. C. 37; 5 Jur. N. S. 196	347
Portland Urban Council and Tilley & Co., <i>In re</i> , [1896] 2 Q. B. 98; 65 L. J. Q. B. 527; 74 L. T. 703	191
Postmaster-General v. Edinburgh Corporation (1899), 10 R. & C. T. C. 247	378
Postmaster-General v. Hutchings, [1916] 1 K. B. 774; 85 L. J. K. B. 1008; 115 L. T. 78; 80 J. P. 246; 14 L. G. R. 554; 32 Times L. R. 296	379
Postmaster-General v. London Corporation (1898), 75 L. T. 120; 62 J. P. 380; 10 R. & C. T. C. 234; 14 Times L. R. 222	378
Potteries, &c. Rail. Co., <i>In re</i> (1883), 25 Ch. D. 251; 53 L. J. Ch. 556; 50 L. T. 104; 32 W. R. 300	385
Pountney v. Clayton (1883), 11 Q. B. D. 820; 52 L. J. Q. B. 566; 49 L. T. 283; 31 W. R. 501, 664; 47 J. P. 288	132, 309
Poynder v. Great Northern Rail. Co. (1847), 2 Ph. 330; 16 Sim. 3; 16 L. J. Ch. 444; 5 Rail. Cas. 196; 11 Jur. 646	96, 99, 175
Prebble and Robinson, <i>In re</i> , [1892] 2 Q. B. 602; 67 L. T. 267; 41 W. R. 301	198
Prescott v. Wood (1868), 37 L. J. Ch. 691	281
Priestley v. Manchester and Leeds Rail. Co. (1840), 2 Rail. Cas. 134; 4 Y. & C. (Ex.) 62	444
Protheroe v. Tottenham, &c. Rail. Co., [1891] 3 Ch. 278; 65 L. T. 323; 7 Times L. R. 645, 724	18, 19, 20, 22, 73
Pugh v. Golden Valley Rail. Co. (1877), 15 Ch. D. 330; 12 Ch. D. 274; 49 L. J. Ch. 721; 42 L. T. 863; 28 W. R. 863	30
Pullen and Liverpool (Mayor, &c. of), <i>In re</i> (1882), 51 L. J. Q. B. 285; 46 L. T. 391; 46 J. P. 468	196
Pulling v. London, Chatham and Dover Rail. Co. (1864), 3 De G. J. & S. 661; 33 L. J. Ch. 505; 33 Beav. 644; 10 Jur. N. S. 665; L. T. 393, 740; 12 W. R. 770, 969	35, 37, 41
Putney (Overseers of) v. London and South Western Rail. Co., [1891] 1 Q. B. 182, 440; 60 L. J. Q. B. 438; 64 L. T. 280; 39 W. R. 291	46, 300, 301

Q.

Queen's Camel (Vicar of), <i>Re</i> (1863), 11 W. R. 503; 8 L. T. 233...	255
Quicke, <i>Ex parte</i> (1864), 12 L. T. 580; 13 W. R. 924	87
Quinton v. Bristol (Mayor, &c. of) (1874), L. R. 17 Eq. 524; 43 L. J. Ch. 783; 30 L. T. 112; 22 W. R. 434	25

R.	PAGE
R. v. Abbott, [1897] 2 Ir. R. 362	335
R. v. Ambergate, &c. Rail. Co. (1853), 1 E. & B. 372; 22 L. J. Q. B. 191	66, 67
R. v. Barton and Immingham Light Railway, <i>Ex parte</i> Simon, [1912] 3 K. B. 72; 81 L. J. K. B. 964; 76 J. P. 344	197, 386
R. v. Bedfordshire C. C., <i>Ex parte</i> Sear, [1920] 2 K. B. 465; 89 L. J. K. B. 425; 123 L. T. 50; 84 J. P. 97; 18 L. G. R. 249; 36 Times L. R. 369	371, 372
R. v. Biram (1852), 17 Q. B. 969; 16 Jur. 640	202, 217
R. v. Birmingham and Oxford Junction Rail. Co. (1851), 15 Q. B. 635, 647, n.; 20 L. J. Q. B. 304	56, 79, 87, 207
R. v. Boyce Combe (1863), 32 L. J. M. C. 67; 11 W. R. 441	183
R. v. Bristol Docks Co. (1810), 12 East, 429	154
R. v. Bristol and Exeter Rail. Co. (1838), 2 Rail. Cas. 99; 11 A. & E. 202, n.	90, 238, 239
R. v. Brown (1867), L. R. 2 Q. B. 630; 36 L. J. Q. B. 322; 16 L. T. 827; 15 W. R. 988; 8 B. & S. 456	109, 127, 451
R. v. Burrow (1884), <i>The Times</i> , 24 Jan. 1884 (C. A.); <i>The Times</i> , 22 Nov. 1884 (H. L.) <i>sub nom.</i> Metropolitan and Metropolitan District Rail. Cos. v. Burrow	115, 117, 118
R. v. Burslem Local Board (1859), 1 E. & E. 1077; 29 L. J. Q. B. 242; 6 Jur. N. S. 696; 8 W. R. 584	344
R. v. Caledonian Rail. Co. (1851), 16 Q. B. 19; 20 L. J. Q. B. 147; 15 Jur. 396	17, 443
R. v. Cambrian Rail. Co. (1869), L. R. 4 Q. B. 320; 10 B. & S. 315; 38 L. J. Q. B. 198; 20 L. T. 437; 17 W. R. 667	198, 199
R. v. Cambrian Rail. Co. (1871), L. R. 6 Q. B. 422; 40 L. J. Q. B. 169; 25 L. T. 84; 12 W. R. 1138	8, 9, 160
R. v. Chelsea (Vestry of St. Luke's) (1871), L. R. 6 Q. B. 572; 7 Q. B. 148; 41 L. J. Q. B. 81; 25 L. T. 914; 20 W. R. 209...147, 148	
R. v. Combe (Boyce) (1863), 32 L. J. M. C. 67; 11 W. R. 441... 183	
R. v. Commissioners of Woods and Forests (1850), 15 Q. B. 761; 19 L. J. Q. B. 497; 15 Jur. 35	81
R. v. Cork JJ., [1910] 2 Ir. R. 421	23
R. v. Cottle (1851), 16 Q. B. 412; 20 L. J. M. C. 162; 15 Jur. 721	45, 312
R. v. Darlington Local Board (1865), 35 L. J. Q. B. 45; 6 B. & S. 562; 13 W. R. 789; 10 Jur. N. S. 1169; 10 L. T. 603 ...342, 512	
R. v. Eastern Counties Rail. Co. (1841), 2 Q. B. 347; 11 L. J. Q. B. 66, 178; 3 Rail. Cas. 22; 6 Jur. 180; 2 G. & D. 1	155
R. v. Eastern Counties Rail. Co. (1843), 12 L. J. Q. B. 271; 3 Rail. Cas. 466; 7 Jur. 628	226
R. v. East London Rail. Co., <i>Ex parte</i> Barnes (1867), 17 L. T. 291. 178	
R. v. E. & W. India Docks and Birmingham Junction Rail. Co. (1853), 22 L. J. Q. B. 380; 2 E. & B. 466; 17 Jur. 1181; 1 W. R. 409	444
R. v. Edwards (1884), 13 Q. B. D. 586; 53 L. J. M. C. 149; 51 L. T. 586; 49 J. P. 117	182, 222, 228, 233
R. v. Farrant (1887), 20 Q. B. D. 58; 57 L. J. M. C. 17; 57 L. T. 880; 36 W. R. 184; 52 J. P. 116	181

TABLE OF CASES.

lv

R.	PAGE
R. v. Fisher (1862), 3 B. & S. 191; 32 L. J. M. C. 12; 9 Jur. N. S. 571; 7 L. T. 325; 11 W. R. 69	127, 450, 451
R. v. Gaisford, [1892] 1 Q. B. 381; 61 L. J. M. C. 50; 66 L. T. 24; 56 J. P. 247	181
R. v. Gardner (1837), 6 A. & E. 112; 1 Jur. 181; 1 N. & P. 308; 6 L. J. K. B. 130	213
R. (War Secretary) v. Goff, [1905] 2 Ir. R. 121	203, 218
R. v. Great Northern Rail. Co., <i>In re</i> Cooling (1849), 14 Q. B. 25; 19 L. J. Q. B. 25; 6 Rail. Cas. 246; 14 Jur. 128	152, 210
R. v. Great Northern Rail. Co. (1876), 2 Q. B. D. 151; 46 L. J. Q. B. 4; 35 L. T. 551; 25 W. R. 41	77, 177, 178, 180, 232
R. v. Great Western Rail. Co. (1852), 1 E. & B. 253; 22 L. J. Q. B. 65	66
R. v. Great Western Rail. Co. (1893), 62 L. J. Q. B. 572; 69 L. T. 572	67
R. v. Halifax Local Board (1865), 14 L. T. 447	238
R. v. Hannay (1874), 44 L. J. M. C. 27; 31 L. T. 702; 23 W. R. 164	182
R. v. Hertfordshire (Justices of) (1845), 6 Q. B. 753; 9 Jur. 731; 14 L. J. M. C. 73	239
R. v. Hungerford Market Co. (1832), 4 B. & Ad. 327; 1 N. & M. 112	79, 80, 87, 207
R. v. Hungerford Market Co., <i>Ex parte</i> Gosling (1833), 4 B. & Ad. 596	123
R. v. Kennedy, [1893] 1 Q. B. 533; 62 L. J. M. C. 168; 68 L. T. 454; 41 W. R. 380; 57 J. P. 346	83, 179, 183
R. v. Lancaster and Preston Rail. Co. (1845), 6 Q. B. 759; 14 L. J. Q. B. 84; 3 Rail. Cas. 724; 9 Jur. 303	208, 225, 241
R. v. Leake (1833), 5 B. & Ad. 469; 2 N. & M. 595	24, 138, 303, 304
R. v. Liverpool and Manchester Rail. Co. (1835), 4 A. & E. 650; 6 N. & M. 186; 1 H. & W. 689	124
R. v. London (Lord Mayor, &c. of) (1867), L. R. 2 Q. B. 292; 16 L. T. 280	5, 6, 207
R. v. London Dock Co. (1836), 5 A. & E. 163; 6 N. & M. 390; 2 H. & W. 267; 5 L. J. K. B. 195	156
R. v. London and Greenwich Rail. Co. (1843), 3 Q. B. 166; 3 Rail. Cas. 138; 6 Jur. 892; 11 L. J. Q. B. 187	94
R. v. London and North Western Rail. Co. (1854), 3 E. & R. 443; 23 L. J. Q. B. 185; 18 Jur. 993	206, 214, 221, 222, 225, 234, 238, 240
R. v. London and North Western Rail. Co. (1863), 9 L. T. 423; 12 W. R. 208	210
R. v. London and North Western Rail. Co., [1894] 2 Q. B. 512; 63 L. J. Q. B. 695; 58 J. P. 719	133, 197, 207, 454
R. v. London and North Western Rail. Co., [1899] 1 Q. B. 921; 68 L. J. Q. B. 685; 80 L. T. 782	198
R. v. London and Southampton Rail. Co. (1839), 10 A. & E. 33; 2 P. & D. 243; 1 Rail. Cas. 717; 8 L. J. Q. B. 220	122, 123, 179
R. v. London and South Western Rail. Co. (1848), 12 Q. B. 775; 17 L. J. Q. B. 326; 5 Rail. Cas. 669; 12 Jur. 973	42, 80, 94
R. v. Manchester and Leeds Rail. Co. (1838), 8 A. & E. 413; 8 L. J. Q. B. 66; 3 N. & P. 439; 2 Jur. 857	240

R.	PAGE
<i>R. v. Manchester, Sheffield, and Lincolnshire Rail. Co.</i> (1854), 4 E. & B. 88; 2 W. R. 591; 1 Jur. N. S. 419	178, 232
<i>R. v. Manchester, Sheffield, and Lincolnshire Rail. Co.</i> (1867), L. R. 2 Q. B. 336; 36 L. J. Q. B. 171; 16 L. T. 173; 15 W. R. 676	211
<i>R. v. Manley Smith (or North London Rail. Co.)</i> (1881), 51 L. J. Q. B. 241; 30 W. R. 272	217
<i>R. v. Manley Smith</i> (1893), 63 L. J. Q. B. 171; 10 R. 611	200
<i>R. v. Manley Smith, In re Church and London School Board</i> (1892), 67 L. T. 197; 40 W. R. 333; 56 J. P. 729; 8 Times L. R. 310	87, 104, 203, 209, 216, 218
<i>R. v. Manley Smith, In re Westfield and Metropolitan Rail. Cos.</i> (1883), 12 Q. B. D. 481; 53 L. J. Q. B. 115; 32 W. R. 275 ...	203, 216, 218
<i>R. v. Maryport and Carlisle Rail. Co.</i> (1850), 15 L. T. (O. S.) 134...	78
<i>R. v. Metropolitan Board of Works</i> (1863), 3 B. & S. 710; 32 L. J. Q. B. 105; 11 W. R. 492; 8 L. T. 238; 9 Jur. N. S. 1008	154
<i>R. v. Metropolitan Board of Works</i> (1869), L. R. 4 Q. B. 358; 38 L. J. Q. B. 201; 10 B. & S. 391; 17 W. R. 1094	151, 156, 159
<i>R. v. Metropolitan Commissioners of Sewers</i> (1852), 1 E. & B. 694; 22 L. J. Q. B. 234; 17 Jur. 787; 1 W. R. 286	344
<i>R. v. Metropolitan Rail. Co., Ex parte Horrocks</i> (1863), 32 L. J. Q. B. 367; 11 W. R. 910; 8 L. T. 663; 4 B. & S. 315; 10 Jur. N. S. 204	206, 222, 225, 234, 238
<i>R. v. Metropolitan Rail. Co.</i> (1865), 13 L. T. 444	294
<i>R. v. Metropolitan Rail. Co., Ex parte Knock</i> (1867), 17 L. T. 291.	78
<i>R. v. Middlesex (Clerk of the Peace)</i> , [1914] 3 K. B. 259; 83 L. J. K. B. 1773; 111 L. T. 579; 79 J. P. 7	47, 75, 161, 297
<i>R. v. Middlesex (Sheriff of), Re Somers and Metropolitan Rail. Co.</i> (1862), 31 L. J. Q. B. 261; 10 W. R. 717; 8 Jur. N. S. 617..	178, 206
<i>R. v. Middlesex (Sheriff of), Re Walker and London and Blackwall Rail. Co.</i> (1842), 3 Q. B. 744; 3 G. & D. 549; 12 L. J. Q. B. 88; 7 Jur. 323, 1154; 3 Rail. Cas. 396	94, 211, 217
<i>R. v. Mountford</i> , [1906] 2 K. B. 814; 75 L. J. K. B. 1003	163
<i>R. v. Nene Outfall Commissioners</i> (1829), 9 B. & C. 875; 4 M. & R. 647	9
<i>R. v. North London Rail. Co. (or Manley Smith)</i> (1881), 51 L. J. Q. B. 241; 30 W. R. 272	217
<i>R. v. Pearce, Ex parte London School Board</i> (1898), 67 L. J. Q. B. 842; 78 L. T. 681; 14 Times L. R. 465	167, 380
<i>R. v. Pease</i> (1832), 4 B. & Ad. 30; 1 N. & M. 690; 2 L. J. M. C. 26	150, 151, 159
<i>R. v. Perkin</i> (1845), 7 Q. B. 165; 9 Jur. 686	214
<i>R. v. Poulter</i> (1887), 20 Q. B. D. 132; 57 L. J. Q. B. 138; 58 L. T. 534; 36 W. R. 117; 52 J. P. 244	123, 127, 142, 168, 179
<i>R. v. Rand</i> (1866), L. R. 1 Q. B. 230; 35 L. J. M. C. 157	239
<i>R. v. Rochdale Improvement Commissioners</i> (1856), 2 Jur. N. S. 861	117, 123, 181
<i>R. v. Rynd</i> (1863), 16 Ir. C. L. R. 29	155
<i>R. v. St. Luke's, Chelsea, Vestry</i> (1871), L. R. 6 Q. B. 572; 7 Q. B. 148; 41 L. J. Q. B. 81; 25 L. T. 914; 20 W. R. 209...	147, 148

R.—Ran

PAGE

<i>R. v. St. Marylebone Vestry</i> (1887), 20 Q. B. D. 415; 57 L. J. M. C. 9; 58 L. T. 180; 36 W. R. 271; 52 J. P. 534	361
<i>R. v. Scard</i> (1894), 10 Times L. R. 545; 27 W. R. 540	118, 239, 240
<i>R. v. Sheffield and Manchester Rail. Co.</i> (1839), 11 A. & E. 194; 1 Rail. Cas. 537	238, 241
<i>R. v. Sheward (or Steward)</i> (1880), 5 Q. B. D. 179; 9 Q. B. D. 741; 49 L. J. Q. B. 329, 716	240
<i>R. v. Smith.</i> See <i>R. v. Manley Smith.</i>	
<i>R. v. South Devon Rail. Co.</i> (1850), 15 Q. B. 1043; 20 L. J. Q. B. 145; 15 Jur. 464	197, 198
<i>R. v. South Holland Drainage Committee</i> (1838), 8 A. & E. 429; 1 P. & D. 79	68, 104, 224, 239, 241
<i>R. v. South Wales Rail. Co., Ex parte Richards</i> (1849), 13 Q. B. 988; 6 Rail. Cas. 197; 18 L. J. Q. B. 310; 13 Jur. 1095 ...	214, 224, 238
<i>R. v. South Wales Rail. Co.</i> (1850), 14 Q. B. 902; 19 L. J. Q. B. 272; 6 Rail. Cas. 489; 14 Jur. 828	48, 303
<i>R. v. Stone</i> (1866), L. R. 1 Q. B. 529; 35 L. J. M. C. 208; 14 L. T. 552; 14 W. R. 791	178, 183, 206
<i>R. v. Sunderland</i> (Justices of), [1901] 2 K. B. 357; 70 L. J. K. B. 946; 85 L. T. 183; 65 J. P. 599	181
<i>R. v. Sutton Harbour Commissioners</i> (1853), 2 W. R. 10; 22 L. T. (O. S.) 86	199
<i>R. v. Vaughan</i> (1869), L. R. 4 Q. B. 190; 38 L. J. M. C. 49; 17 W. R. 115	122, 158, 179, 183, 224, 238
<i>R. v. Wallasey Local Board</i> (1869), L. R. 4 Q. B. 351; 38 L. J. Q. B. 217; 10 B. & S. 428; 21 L. T. 90; 17 W. R. 766	341, 511
<i>R. v. Warwickshire</i> (Sheriff of) (1841), 2 Rail. Cas. 661	213
<i>R. v. Warwickshire</i> (Sheriff of) (1854), 3 W. R. 164; 24 L. T. (O. S.) 211	210, 211, 239
<i>R. v. Waterford and Limerick Rail. Co.</i> (1852), 2 Ir. C. L. 580 ...	451
<i>R. v. West Midland Rail. Co.</i> (1862), 11 W. R. 857	199
<i>R. v. Westminster High Bailiff, Ex parte London County Council</i> , [1903] 2 K. B. 189; 72 L. J. K. B. 600; 88 L. T. 834; 52 W. R. 10, 109; 67 J. P. 302; 19 Times L. R. 506; 1 L. G. R. 569	217
<i>R. v. Woods and Forests</i> (Commissioners of) (1850), 15 Q. B. 761; 19 L. J. Q. B. 497; 15 Jur. 35	81
<i>R. v. Wycombe Rail. Co.</i> (1867), L. R. 2 Q. B. 310; 36 L. J. Q. B. 121; 15 L. T. 610; 15 W. R. 489	30
<i>R. v. York and North Midland Rail. Co.</i> (1853), 1 E. & B. 178, 858; 22 L. J. Q. B. 41, 225; 7 Rail. Cas. 266; 17 Jur. 62; 1 W. R. 35	66, 67
<i>Radams' (W.) Microbe Killer Co. v. Leather</i> , [1892] 1 Q. B. 85; 61 L. J. Q. B. 38; 65 L. T. 604; 40 W. R. 83	226
<i>Railstone v. York, &c. Rail. Co.</i> (1850), 15 Q. B. 404; 19 L. J. Q. B. 464; 14 Jur. 1021	209, 216, 232, 235
<i>Ramsden v. Manchester and Altrincham Rail. Co.</i> (1848), 1 Ex. 723; 5 Rail. Cas. 552; 12 Jur. 293	15, 67, 71, 90, 92
<i>Rangeley v. Midland Rail. Co.</i> (1868), L. R. 3 Ch. 306; 37 L. J. Ch. 313; 18 L. T. 69; 16 W. R. 547	29, 93
<i>Ranken v. East and West India Docks and Birmingham Junction Rail. Co.</i> (1850), 12 Beav. 298; 19 L. J. Ch. 153; 14 Jur. 7 ...	67, 296

Rap---Ric	PAGE
Raper <i>v.</i> Crystal Palace and South London Rail. Co. (1868), 18 L. T. 8; 16 W. R. 413	61
Raphael <i>v.</i> Thames Valley Rail. Co. (1867), L. R. 2 Ch. 147; 36 L. J. Ch. 209; 16 L. T. 1; 15 W. R. 322	60
Rawlings <i>v.</i> Metropolitan Rail. Co. (1868), 37 L. J. Ch. 824; 18 L. T. 871	56, 74
Ray <i>v.</i> Walker, [1892] 2 Q. B. 88; 61 L. J. Q. B. 718	309, 314
Rayner, <i>Ex parte</i> (1878), 3 Q. B. D. 446; 47 L. J. Q. B. 660; 39 L. T. 232	200, 340, 509
Read <i>v.</i> Victoria Station and Pimlico Rail. Co. (1863), 11 W. R. 1032; 9 Jur. N. S. 1061; 1 H. & C. 826; 32 L. J. Ex. 167 ...	177, 205, 206, 224, 234, 238
Reading <i>v.</i> Hamilton (1862), 5 L. T. 628	262
Reaston's Estate, <i>In re</i> (1872), L. R. 13 Eq. 564	257
Reddin <i>v.</i> Metropolitan Board of Works (1862), 31 L. J. Ch. 660; 7 L. T. 6; 10 W. R. 764; 4 De G. F. & J. 532	39
Reeve, <i>Ex parte</i> , <i>In re</i> Manor of Lowestoft and Great Eastern Rail. Co. (1883), 24 Ch. D. 253; 52 L. J. Ch. 912; 49 L. T. 523; 32 W. R. 309	48, 273
Reeve <i>v.</i> Gibson, [1891] 1 Q. B. 652; 60 L. J. Q. B. 451; 39 W. R. 420	275
Regent's Canal Co. <i>v.</i> London School Board, (1885) W. N. 4	48
Regent's Canal and Dock Co. <i>v.</i> London County Council, [1912] 1 Ch. 583; 81 L. J. Ch. 377; 106 L. T. 745; 76 J. P. 353; 10 L. G. R. 358; 56 S. J. 309; 28 Times L. R. 248	39
Regent's Canal Co. <i>v.</i> Ware (1857), 23 Beav. 575; 26 L. J. Ch. 566; 29 L. T. (O. S.) 274; 3 Jur. N. S. 924; 5 W. R. 617... ..	57, 140, 228
Rehoboth Chapel, <i>In re</i> (1875), L. R. 19 Eq. 180; 44 L. J. Ch. 375; 31 L. T. 371; 23 W. R. 405	254
Reynolds, <i>In re</i> (1876), 3 Ch. D. 61; 35 L. T. 293; 24 W. R. 991. 259	
Rhodes' Will, <i>In re</i> (1886), 31 Ch. D. 499; 55 L. J. Ch. 477; 54 L. T. 294; 34 W. R. 270, 501	251
Rhodes <i>v.</i> Airedale Drainage Commissioners (1876), 1 C. P. D. 402; 45 L. J. C. P. 861; 35 L. T. 46; 24 W. R. 1053	187, 194, 222, 235, 236
Rhondda and Swansea Rail. Co. <i>v.</i> Talbot, [1897] 2 Ch. 131; 66 L. J. Ch. 570; 76 L. T. 694; 13 Times L. R. 450	127
Rhys <i>v.</i> Dare Valley Rail. Co. (1874), L. R. 19 Eq. 93; 23 W. R. 23	139
Richard and Great Western Rail. Co., <i>In re</i> , [1905] 1 K. B. 68; 74 L. J. K. B. 9; 91 L. T. 724; 69 J. P. 17; 53 W. R. 83; 21 Times L. R. 37	134, 141, 170, 194, 224, 226
Richards <i>v.</i> De Winton, Richards <i>v.</i> Evans, [1901] 2 Ch. 566; [1903] 1 Ch. 507; 70 L. J. Ch. 719; 72 L. J. Ch. 269; 84 L. T. 831; 88 L. T. 333; 50 W. R. 87; 65 J. P. 696	290, 291
Richards <i>v.</i> Scarborough Public Market Co. (1853), 23 L. J. Ch. 110	31
Richards <i>v.</i> Swansea Improvement and Tramways Co. (1878), 9 Ch. D. 425; 38 L. T. 833; 26 W. R. 764	36, 37, 39, 40, 41
Richardson <i>v.</i> Elmit (1876), 2 C. P. D. 9; 36 L. T. 58	56

Ric—Rua

PAGE

Richardson <i>v.</i> South Eastern Rail. Co. (1851), 11 C. B. 154; 15 Jur. 660; 20 L. J. C. P. 236; (1852), 21 L. J. C. P. 122; 15 C. B. 810; 16 Jur. 151 (Exch. Ch.)	209, 216
Richmond <i>v.</i> North London Rail. Co. (1868), L. R. 5 Eq. 352; 3 Ch. 679; 37 L. J. Ch. 273, 886; 18 L. T. 8; 16 W. R. 449...	79, 85
Ricket <i>v.</i> Metropolitan Rail. Co. (1865), 34 L. J. Q. B. 257; 13 W. R. 455 (Exch. Ch.); (1867), L. R. 2 H. L. 175; 36 L. J. Q. B. 205; 16 L. T. 542; 15 W. R. 937 (H. L.)	116, 145, 148, 150, 151, 156, 157, 158, 159
Ricketts <i>v.</i> East and West India Docks and Birmingham Junction Rail. Co. (1852), 12 C. B. 160; 21 L. J. C. P. 201; 7 Rail. Cas. 295; 16 Jur. 1072	450
Riddell <i>v.</i> Lanarkshire and Ayrshire Rail. Co. (1904), 6 F. (Ct. of Sess.)	432
Riddell <i>v.</i> Newcastle and Gateshead Water Co. (1879), <i>The Times</i> , 14 June, 1879	110
Rigby <i>v.</i> Bennett (1882), 21 Ch. D. 559; 48 L. T. 47; 31 W. R. 222; 47 J. P. 217	130
Righton <i>v.</i> Righton (1867), 36 L. J. Ch. 61	56, 57
Ringer, <i>Ex parte</i> (1909), 73 J. P. 436; 7 L. G. R. 1041; 53 S. J. 745; 25 Times L. R. 718	371
Ripley <i>v.</i> Great Northern Rail. Co. (1875), L. R. 10 Ch. 435; 31 L. T. 869; 23 W. R. 685	165
River Dun Navigation <i>v.</i> North Midland Rail. Co. (1838), 1 Rail. Cas. 135	25
River Roden Co. <i>v.</i> Barking Urban District Council, (1902) W. N. 86, 103; 18 Times L. R. 542, 608	95, 176
River Wear Commissioners <i>v.</i> Adamson (1877), 2 App. Cas. 743; 47 L. J. Q. B. 193; 37 L. T. 543; 26 W. R. 217	1
Roberts <i>v.</i> Charing Cross, Euston and Hampstead Rail. Co. (1903), 87 L. T. 732; 19 Times L. R. 160	149, 150, 160
Roberts <i>v.</i> Gwyrfa District Council, [1899] 1 Ch. 583; 2 Ch. 608; 68 L. J. Ch. 233, 757; 81 L. T. 465; 48 W. R. 51; 63 J. P. 181; 16 Times L. R. 2	303, 342, 512
Robertson <i>v.</i> City and South London Rail. Co. (1904), 20 Times L. R. 395; 68 J. P. 280	186, 217
Robertson <i>v.</i> Wrexham, Mold, &c. Rail. Co. (1869), 17 W. R. 137...	63
Robinson's Settlement Trusts, <i>In re</i> , [1891] 3 Ch. 129; 60 L. J. Ch. 776; 65 L. T. 244; 39 W. R. 632; 7 Times L. R. 488	258
Roderick <i>v.</i> Aston Local Board (1877), 5 Ch. D. 328; 46 L. J. Ch. 802; 36 L. T. 328; 25 W. R. 403	343, 344, 511
Rogers <i>v.</i> Hull Dock Co. (1863), 4 N. R. 494; 12 W. R. 1101; 11 L. T. 42; <i>affd.</i> , 34 L. J. Ch. 165; 11 L. T. 463; 13 W. R. 217; 10 Jur. N. S. 1245	75, 90
Rosenberg <i>v.</i> Cook (1881), 8 Q. B. D. 162; 51 L. J. Q. B. 170; 30 W. R. 344	304, 312
Ross <i>v.</i> York, &c. Rail. Co. (1849), 18 L. J. Q. B. 199; 5 Rail. Cas. 516; 5 D. & L. 695	218
Row, <i>In re</i> (1874), L. R. 17 Eq. 300; 43 L. J. Ch. 347; 29 L. T. 824	259
Ruabon Brick and Terra Cotta Co. <i>v.</i> Great Western Rail. Co., [1893] 1 Ch. 427; 62 L. J. Ch. 483; 68 L. T. 110; 41 W. R. 418...	136, 137

Ruc—St.	PAGE
Ruck's Trusts, <i>In re</i> (1895), 13 R. 637	265
Rugby Portland Cement Co. v. London and North Western Rail. Co., [1908] 2 K. B. 606; 77 L. J. K. B. 1096; 98 L. T. 880; 72 J. P. 245; 24 Times L. R. 561	123, 133
Russell v. Wakefield Waterworks Co. (1875), L. R. 20 Eq. 474; 44 L. J. Ch. 496; 32 L. T. 685; 23 W. R. 887	45
Ruthin, &c. Railway Act, <i>In re, Ex parte</i> Hughes' Trustees (1886), 32 Ch. D. 438; 56 L. J. Ch. 30; 55 L. T. 237; 34 W. R. 581...	385
Ryan v. Great Southern and Western Rail. Co. (1892), 32 L. R. Ir. 15	452
Ryder, <i>In re</i> (1888), 37 Ch. D. 595; 57 L. J. Ch. 459; 58 L. T. 783	263

S.

Sadd v. Maldon, &c. Rail. Co. (1851), 6 Ex. 143; 20 L. J. Ex. 102; 6 Rail. Cas. 779	29, 30
St. Alban's, Wood Street (Rector of), <i>Re</i> (1891), 66 L. T. 51 ...	251,
257, 265, 281, 283	
St. Alphage (Parson, &c. of), <i>In re</i> , (1886) W. N. 154; 55 L. T. 314	257
St. Bartholomew's Hospital, <i>Re</i> (1859), 4 Drew. 425	280
St. Bartholomew's Hospital (Governors of), <i>Ex parte</i> (1875), L. R. 20 Eq. 369; 32 L. T. 652	284
St. Botolph, Aldgate (Vicar of), <i>Ex parte</i> , [1894] 3 Ch. 544 ...	252, 255
St. Dunstan's-in-the-West Charity Schools, <i>In re</i> (1871), L. R. 12 Eq. 537; 24 L. T. 613; 19 W. R. 887	274
St. James's and Pall Mall Electric Light Co. v. R. (1904), 73 L. J. K. B. 518; 90 L. T. 344; 68 J. P. 288	150, 378
St. John Baptist College, Oxford, <i>Ex parte, In re</i> Metropolitan and District Railways Act (1882), 22 Ch. D. 93; 51 L. J. Ch. 268; 48 L. T. 331; 31 W. R. 55	262
St. John's Church, Fulham (Minister and Churchwardens of), <i>Ex parte</i> (1857), 28 L. T. (O. S.) 173	256
St. Katharine (Hospital of), <i>Ex parte</i> (1881), 17 Ch. D. 378; 44 L. T. 52	275
St. Katherine's Dock Co., <i>Re</i> (1844), 3 Rail. Cas. 514; 14 W. R. 978	280
St. Leonard's, Shoreditch, Vestry v. London County Council, [1895] 2 Q. B. 104; 64 L. J. Q. B. 615; 72 L. T. 802; 43 W. R. 598; 59 J. P. 423; 11 Times L. R. 420	301, 302, 357
St. Margaret, Leicester (Prebend of), <i>Re</i> (1864), 10 L. T. 221 ...	265
St. Martin's, Birmingham (Rector of), <i>Ex parte</i> (1870), L. R. 11 Eq. 23; 40 L. J. Ch. 69; 23 L. T. 575; 19 W. R. 95	252
St. Mary, Battersea (Vestry of) v. County of London and Brush Provincial Electric Lighting Co., [1899] 1 Ch. 474; 68 L. J. Ch. 238; 80 L. T. 31	72, 506
St. Mary Woolnoth and St. Mary Woolchurch Haw and City and South London Rail. Co., <i>In re</i> , [1903] 2 K. B. 728; 72 L. J. K. B. 936; 88 L. T. 530; 67 J. P. 221; 19 Times L. R. 363; affd., H. L., [1905] A. C. 1; 74 L. J. K. B. 147; 92 L. T. 34; 21 Times L. R. 127; 69 J. P. 101	113

St.—Sen	PAGE
St. Pancras Burial Ground, <i>In re</i> (1866), L. R. 3 Eq. 173; 36 L. J. Ch. 52; 14 W. R. 576	252, 273, 274
St. Paul v. Birmingham, &c. Rail. Co. (1853), 11 Hare, 305; 21 L. T. (O. S.) 226; 17 Jur. 1176	96
St. Paul's Schools, Finsbury, <i>Re</i> (1883), 52 L. J. Ch. 454; 48 L. T. 412; 31 W. R. 424	279
St. Sepulchre's Westminster Estate, <i>Re</i> (1864), 4 De G. J. & S. 232; 33 L. J. Ch. 372; 10 Jur. N. S. 298; 9 L. T. 819; 12 W. R. 499	4
St. Stephen, City of London (Churchwardens of) v. Great Northern and City Rail. Co. (1902), 86 L. T. 390; 66 J. P. 373; 50 W. R. 395; 18 Times L. R. 350	302
St. Thomas' Church Lands, Bristol (Trustees of), <i>Ex parte</i> , (1870) W. N. 192; 23 L. T. 135	268
St. Thomas' Hospital, <i>In re</i> (1863), 11 W. R. 1018	256
St. Thomas' Hospital (Governors of) v. Charing Cross Rail. Co. (1861), 1 J. & H. 400; 30 L. J. Ch. 395; 4 L. T. 13; 9 W. R. 411; 7 Jur. N. S. 256	35, 36, 50
Salisbury (Marquis of) v. Great Northern Rail. Co. (1852), 17 Q. B. 840; 21 L. J. Q. B. 185; 16 Jur. 740	79, 90, 101
Salisbury (Marquis of) v. Great Northern Rail. Co. (1858), 5 C. B. N. S. 174; 28 L. J. C. P. 40; 7 W. R. 75; 5 Jur. N. S. 70...70, 444	
Salisbury (Marquis of) and London and North Western Rail. Co., <i>In re</i> (1879), reported [1892] 1 Ch. 75, n.120, 121, 140, 286, 287	
Salmon v. Randall (1838), 3 Myl. & Cr. 439	26
Salter v. Metropolitan District Rail. Co. (1870), L. R. 9 Eq. 432; 39 L. J. Ch. 567	38
Sandbach Charity Trustees v. North Staffordshire Rail. Co. (1878), 3 Q. B. D. 1; 47 L. J. Q. B. 10; 37 L. T. 391; 26 W. R. 229...203, 218	
Sanders, <i>In re</i> (1894), 70 L. T. 755	276
Sanderson v. Cockermouth Rail. Co. (1850)), 19 L. J. Ch. 503; 3 H. & Tw. 327	60
Saunderton Glebe Lands, <i>In re</i> , [1903] 1 Ch. 480; 72 L. J. Ch. 276; 88 L. T. 267; 51 W. R. 522	267
Scales v. Pickering (1828), 4 Bing. 448; 1 M. & P. 195	25
Schmarr, <i>In re</i> , [1902] 1 Ch. 326; 71 L. J. Ch. 219; 86 L. T. 71; 50 W. R. 245; 18 Times L. R. 270	275, 281, 282
Schwinge v. London and Blackwall Rail. Co. (1855), 3 Sm. & Giff. 30; 24 L. J. Ch. 405; 1 Jur. N. S. 368; 3 W. R. 260	42, 107, 206, 208, 209
Scottish North Eastern Rail. Co. v. Stewart (1859), 3 Macq. H. L. (Sc.) 382; 5 Jur. N. S. 607; 7 W. R. 458	67
Searby v. Tottenham Rail. Co. (1867), L. R. 5 Eq. 409	307, 308
Secretary of State for Foreign Affairs v. Charlesworth, Pilling & Co., [1901] A. C. 373; 70 L. J. P. C. 25; 84 L. T. 212	112
Secretary of State for War and Hurley's Contract, <i>In re</i> , [1904] 1 Ir. R. 354	299
Sellers v. Matlock Bath Local Board (1885), 14 Q. B. D. 928; 52 L. T. 762	341, 511
Senior, <i>Ex parte</i> , <i>In re</i> South Yorkshire, &c. Rail. Co. (1849), 18 L. J. Q. B. 333; 14 Jur. 1093; 7 D. & L. 36	200, 207

Sen—Ske	PAGE
Senior <i>v.</i> Metropolitan Rail. Co. (1863), 2 H. & C. 258; 32 L. J. Ex. 225; 8 L. T. 544; 11 W. R. 836; 9 Jur. N. S. 802...115, 153, 316	
Stewart's Estate, <i>In re</i> (1874), L. R. 18 Eq. 278; 30 L. T. 355; 22 W. R. 655263, 277	
Sewell <i>v.</i> Harrow and Uxbridge Rail. Co. (1902), 19 Times L. R. 130; 20 Times L. R. 21 83	
Seymour <i>v.</i> London and South Western Rail. Co. (1859), 5 Jur. N. S. 753; 33 L. T. (O. S.) 280 79	
Sharpe <i>v.</i> Metropolitan District Rail. Co. (1879), 4 Q. B. D. 645... 202, 217	
Shaw and Birmingham (Mayor, &c. of), <i>In re</i> (1884), 27 Ch. D. 614; 54 L. J. Ch. 51; 51 L. T. 684; 33 W. R. 74139, 543	
Shaw and Ronaldson, <i>In re</i> , [1892] 1 Q. B. 91; 61 L. J. Q. B. 141.. 193	
Sheffield (Mayor, &c. of), <i>Ex parte</i> (1856), 21 Beav. 162; 25 L. J. Ch. 587; 2 Jur. N. S. 31; 4 W. R. 70 253	
Sheffield (Mayor of) and St. William's Roman Catholic Chapel and Schools, <i>In re</i> , [1903] 1 Ch. 208; 72 L. J. Ch. 71; 88 L. T. 157; 51 W. R. 380 257	
Sheffield (Vicar of), <i>Ex parte</i> (1904), 68 J. P. 313250, 278	
Shelfer <i>v.</i> City of London Electric Lighting Co., [1895] 1 Ch. 287; 64 L. J. Ch. 216; 72 L. T. 34; 43 W. R. 238 32	
Shepherd <i>v.</i> Norwich (Mayor, &c. of) (1885), 30 Ch. D. 553; 54 L. J. Ch. 1050; 53 L. T. 251; 33 W. R. 841; 1 Times L. R. 54577, 78, 105, 107, 192	
Shipton-under-Wychwood (Rector of), <i>Ex parte</i> (1871), 19 W. R. 549 254	
Shrewsbury (Earl of) <i>v.</i> North Staffordshire Rail. Co. (1865), L. R. 1 Eq. 593; 35 L. J. Ch. 156; 12 Jur. N. S. 63; 13 L. T. 648; 14 W. R. 220 55	
Shrewsbury (Earl of) <i>v.</i> Wirrall Railways Committee, [1895] 2 Ch. 812; 64 L. J. Ch. 850; 73 L. T. 234; 44 W. R. 19198, 203	
Shoreham Aerodrome Case, The (<i>In re</i> A Petition of Right), [1915] 3 K. B. 649; 54 L. J. K. B. 1961; 113 L. T. 575; 115 L. T. 419; 60 S. J. 694; 32 Times L. R. 699 334	
Sidney <i>v.</i> North Eastern Rail. Co., [1914] 3 K. B. 629; 83 L. J. K. B. 1640; 111 L. T. 677 110	
Sidney <i>v.</i> North Eastern Rail. Co., [1916] 2 K. B. 760; 86 L. J. K. B. 142; 61 S. J. 28; 116 L. T. 444 200	
Siegenberg <i>v.</i> Metropolitan District Rail. Co. (1883), 49 L. T. 554; 32 W. R. 33337, 80	
Simcoe <i>v.</i> Pethick, [1898] 2 Q. B. 555; 67 L. J. Q. B. 919; 79 L. T. 432 291	
Simpson <i>v.</i> Lancaster and Carlisle Rail. Co. (1847), 15 Sim. 580; 4 Rail. Cas. 625; 11 Jur. 87973, 85	
Simpson <i>v.</i> South Staffordshire Water Works Co. (1865), 4 De G. J. & S. 679; 34 L. J. Ch. 380; 11 Jur. N. S. 453; 12 L. T. 360; 13 W. R. 729, 80825, 26, 29	
Simpson <i>v.</i> Westminster Palace Hotel Co. (1860), 8 H. L. C. 712; 2 L. T. 707; 6 Jur. N. S. 985 45	
Sims <i>v.</i> Commercial Rail. Co. (1838), 1 Rail. Cas. 431 73	
Sion College, <i>Re</i> (1888), 57 L. T. 743 4	
Skerratt <i>v.</i> North Staffordshire Rail. Co. (1848), 2 Ph. 475; 17 L. J. Ch. 161; 5 Rail. Cas. 166; 12 Jur. 46 196	

Slip—Sou

PAGE

Slipper <i>v.</i> Tottenham and Hampstead Junction Rail. Co. (1867), L. R. 4 Eq. 112; 36 L. J. Ch. 841; 16 L. T. 446; 15 W. R. 861	126, 299
Smith, <i>In re, Ex parte</i> London and North Western Rail. Co. (1888), 40 Ch. D. 386; 58 L. J. Ch. 108; 60 L. T. 77; 37 W. R. 199	257, 261
Smith <i>v.</i> Birmingham Gas Co. (1834), 1 A. & E. 526; 3 N. & M. 771; 3 L. J. K. B. 165	54
Smith <i>v.</i> Great Western Rail. Co. (1877), 3 App. Cas. 165; 2 Ch. D. 250; 47 L. J. Ch. 97; 37 L. T. 645; 26 W. R. 130 ... 8, 74, 134, 135, 169	
Smith <i>v.</i> Smith (1868), L. R. 3 Ex. 282; 38 L. J. Ex. 37... 304, 305, 311	
Smith's (William) Estate, <i>In re</i> (1870), L. R. 9 Eq. 178; 18 W. R. 369	262, 277
Smith's Leaseholds, <i>Re</i> (1866), 14 W. R. 949	253
Solway Rail. Co. <i>v.</i> Jackson (1874), 1 Rettie (Sc.) 831	126, 154
Somers and Metropolitan Rail. Co., <i>Re, R. v.</i> Middlesex (Sheriff of) (1862), 31 L. J. Q. B. 261; 10 W. R. 717; 8 Jur. N. S. 617	178, 206
Somerset and Dorset Rail. Co., <i>Re</i> (1870), 21 L. T. 656; 18 W. R. 332	63
Somerville, <i>Ex parte. See</i> South Eastern Rail. Co., <i>In re</i>	247
Souch <i>v.</i> East London Rail. Co. (1874), L. R. 16 Eq. 108; 42 L. J. Ch. 477; 21 W. R. 590; 22 W. R. 566	71
South City Market Co., <i>In re, Ex parte</i> Bergin (1884), 13 L. R. Ir. 245	297
South Eastern Rail. Co., <i>In re, Ex parte</i> Somerville (1883), 23 Ch. D. 167; 52 L. J. Ch. 438; 48 L. T. 416; 31 W. R. 518	247
South Eastern Rail. Co. <i>v.</i> Associated Portland Cement Manufac- turers (1900), Ltd., [1910] 1 Ch. 12; 79 L. J. Ch. 150; 101 L. T. 865; 74 J. P. 21; 54 S. J. 80; 26 Times L. R. 61 ... 23, 44, 60, 127	
South Eastern Rail. Co. <i>v.</i> London C. C., [1915] 2 Ch. 252; 84 L. J. Ch. 756; 113 L. T. 392; 79 J. P. 545; 13 L. G. R. 1302; 59 S. J. 508	108, 115, 316
South Eastern Rail. Co. <i>v.</i> Richardson (1852), 15 C. B. 810; 21 L. J. C. P. 122; 16 Jur. 151	200, 215, 218
South Eastern Rail. Co. and Wiffin's Contract, <i>In re</i> , [1907] 2 Ch. 366; 76 L. J. Ch. 481; 97 L. T. 676	23, 167, 303
Southport and Lytham Tramroad Act, 1900, <i>In re</i> , [1911] 1 Ch. 120; 80 L. J. Ch. 137; 104 L. T. 154	385
South Staffordshire Rail. Co. <i>v.</i> Hall (1851), 20 L. J. Ch. 397; 6 Rail. Cas. 389; 15 Jur. 322; affirmed, 3 Macn. & G. 353; 16 Jur. 93	107, 208
South Wales Rail. Co., <i>Re</i> (1851), 14 Beav. 418; 15 Jur. 1145; 20 L. J. Ch. 534; 6 Rail. Cas. 151	98, 245
South Wales Rail. Co. <i>v.</i> Richards (1849), 18 L. J. Q. B. 310; 6 Rail. Cas. 197; 13 Q. B. 988; 13 Jur. 1095	214, 224, 238
Southwark and Vauxhall Water Co. <i>v.</i> Wandsworth District Board of Works, [1898] 2 Ch. 603; 67 L. J. Ch. 657; 79 L. T. 132; 47 W. R. 107; 62 J. P. 756	149
South Yorkshire, &c. Rail. Co., <i>In re, Ex parte</i> Senior (1849), 18 L. J. Q. B. 333; 14 Jur. 1093; 7 D. & L. 36	200, 207

Sow—Sto	PAGE
Sowry, <i>In re</i> (1873), L. R. 8 Ch. 736; 29 L. T. 233; 21 W. R. 717	257
Spackman v. Great Western Rail. Co. (1855), 1 Jur. N. S. 790; 26 L. T. (O. S.) 22	40, 42
Sparrow v. Oxford, &c. Rail. Co. (1852), 2 De G. M. & G. 94, 108; 9 Hare, 436; 21 L. J. Ch. 731; 16 Jur. 703	6, 15, 35, 40, 79
Speer's Trusts, <i>In re</i> (1876), 3 Ch. D. 262; 24 W. R. 880	255
Spencer v. Metropolitan Board of Works (1882), 22 Ch. D. 142; 52 L. J. Ch. 249; 47 L. T. 459; 31 W. R. 347	104, 107, 208
Spencer-Bell and London and South Western Rail. Co., <i>Re</i> (1883), 33 W. R. 771	139, 294
Spillers & Baker and Leetham & Sons, <i>In re</i> , [1897] 1 Q. B. 312; 66 L. J. Q. B. 326; 76 L. T. 35; 45 W. R. 241; 13 Times L. R. 152	195
Spitalfields School and Commissioners of Woods and Forests, <i>In re</i> (1871), L. R. 10 Eq. 671; 22 L. T. 569; 18 W. R. 799	274
Spooner's Estate, <i>In re</i> (1854), 1 K. & J. 220	245
Spurstone's Charity, <i>In re</i> (1874), L. R. 18 Eq. 279; 43 L. J. Ch. 512; 30 L. T. 355; 22 W. R. 566	257
Stafford's Charity, <i>In re</i> , (1887) W. N. 252; 57 L. T. 846	251, 264
Staffordshire, &c. Canal Co. v. Birmingham Canal Co. (1866), L. R. 1 H. L. 254; 35 L. J. Ch. 757	23, 303
Stainton v. Woolrych and Metropolitan Board of Works (1857), 26 L. J. Ch. 300; 23 Beav. 225; 3 Jur. N. S. 257; 5 W. R. 305 ...	347
Stamps v. Birmingham, &c. Rail. Co. (1848), 2 Ph. 673; 17 L. J. Ch. 431; 6 Rail. Cas. 123	85
Standish v. Liverpool (Mayor, &c. of) (1852), 1 Drew. 1	93
Staples, <i>Ex parte</i> (1852), 1 De G. M. & G. 294; 21 L. J. Ch. 251..	263
Starr v. London (Corporation of) (1869), L. R. 7 Eq. 236; 20 L. T. 937	206
Stead's Mortgaged Estates, <i>In re</i> (1876), 2 Ch. D. 713; 45 L. J. Ch. 634; 35 L. T. 465; 24 W. R. 698	272
Stebbing v. Metropolitan Board of Works (1870), L. R. 6 Q. B. 37; 40 L. J. Q. B. 1; 19 W. R. 73; 23 L. T. 530 ...	112, 113, 225, 239
Steele v. Liverpool (Mayor, &c. of) (1866), 14 W. R. 311; 7 B. & S. 261	81
Steele v. Midland Rail. Co. (1866), L. R. 1 Ch. 275; 14 W. R. 367; 12 Jur. N. S. 218; 14 L. T. 3	23, 37
Steele v. Midland Rail. Co. (1869), 21 L. T. 387	105
Sterry's (or Perry's) Estate, <i>Re</i> (1855), 3 W. R. 561; 1 Jur. N. S. 917	274
Stevens, <i>Ex parte</i> (1848), 2 Ph. 772; 13 Jur. 2; 5 Rail. Cas. 437...	97
Stevenson v. North British Rail. Co. (1902), 4 F. (Ct. of Sess.) 224	71
Stewart, <i>In re</i> (1889), 41 Ch. D. 494; 60 L. T. 737; 37 W. R. 484..	247
Stockport, Timperley, &c. Rail. Co., <i>Re</i> (1864), 33 L. J. Q. B. 251; 10 L. T. 426; 10 Jur. N. S. 614	142, 163, 164, 165, 166
Stockton and Darlington Rail. Co. v. Brown (1860), 9 H. L. C. 246; 8 W. R. 708; 6 Jur. N. S. 1168	30, 31, 136
Stone v. Commercial Rail. Co. (1839), 4 Myl. & Cr. 122; 9 Sim. 621; 1 Rail. Cas. 375	94, 206, 208, 223

Sto—Sym	PAGE
Stone <i>v.</i> Yeovil (Mayor, &c. of) (1876), 2 C. P. D. 99; 1 C. P. D. 691; 1 C. & D. 701; 46 L. J. C. P. 137; 45 L. J. C. P. 657; 36 L. T. 279; 34 L. T. 874; 25 W. R. 240; 24 W. R. 1073 ...14, 142, 143, 144, 152, 168, 173, 174, 249	
Stoneham <i>v.</i> London, Brighton and South Coast Rail. Co. (1871), L. R. 7 Q. B. 1; 41 L. J. Q. B. 1; 25 L. T. 788; 20 W. R. 77... 293	
Storor <i>v.</i> Great Western Rail. Co. (1839), 2 Y. & C. (Ch.) 48; 6 Jur. 1009; 3 Rail. Cas. 106; 12 L. J. Ch. 65 60	
Stourbridge Canal Co. <i>v.</i> Dudley (Earl of) (1860), 30 L. J. Q. B. 108; 3 E. & E. 409; 7 Jur. N. S. 329; 3 L. T. 449; 9 W. R. 158 453	
Strabane R. Co., <i>Ex parte</i> , [1910] 1 Ir. R. 135 294	
Strathmore Estates, <i>In re</i> (1874), L. R. 18 Eq. 338 267	
Stratton <i>v.</i> Metropolitan Board of Works (1874), L. R. 10 C. P. 76; 44 L. J. M. C. 33; 31 L. T. 673; 23 W. R. 447301, 302	
Streatham and General Estates Co. <i>v.</i> Public Works Commissioners (1888), 4 Times L. R. 766; 52 J. P. 615119, 214, 226	
Stretton <i>v.</i> Great Western and Brentford Rail. Co. (1870), L. R. 5 Ch. 751; 40 L. J. Ch. 50; 23 L. T. 379; 18 W. R. 1078 ...60, 67, 69	
Stringer and Riley Bros., <i>In re</i> , [1901] 1 K. B. 105; 70 L. J. K. B. 19; 49 W. R. 111197, 243	
Stroud <i>v.</i> Watts (1846), 3 D. & L. 799; 10 Jur. 497 214	
Sudeley (Lord) and Baines & Co., <i>In re</i> , [1894] 1 Ch. 334; 63 L. J. Ch. 194; 70 L. T. 549; 42 W. R. 231..... 50	
Summers <i>v.</i> Holborn Board of Works, [1893] 1 Q. B. 612; 62 L. J. M. C. 81; 68 L. T. 226; 41 W. R. 445; 57 J. P. 326 520	
Sunderland (Freemen, &c. of), <i>Ex parte</i> (1852), 1 Drew. 184; 16 Jur. 370 274	
Sutton Harbour Improvement Commissioners <i>v.</i> Hitchens (1851), 1 De G. M. & G. 161; 21 L. J. Ch. 7388, 172, 190	
Sutton Harbour Improvement Commissioners <i>v.</i> Hitchens (1853), 16 Beav. 381 197	
Sutton <i>v.</i> Norwich (Mayor, &c. of) (1858), 27 L. J. Ch. 739; 31 L. T. (O. S.) 389; 6 W. R. 432 347	
Swainston <i>v.</i> Finn and Metropolitan Board of Works (1883), 52 L. J. Ch. 235; 31 W. R. 498; 48 L. T. 63411, 358	
Swanston <i>v.</i> Twickenham Local Board (1879), 11 Ch. D. 838; 48 L. J. Ch. 623; 40 L. T. 734; 27 W. R. 924344, 346, 511	
Sweetman <i>v.</i> Metropolitan Rail. Co. (1863), 1 H. & M. 543; 12 W. R. 304; 10 L. T. 156124, 178, 180	
Swindon Waterworks Co. <i>v.</i> Wilts and Berks Canal Navigation Co. (1875), L. R. 7 H. L. 697; 45 L. J. Ch. 638; 33 L. T. 513; 24 W. R. 284138, 303	
Sydney Municipal Council <i>v.</i> Young, [1898] A. C. 457; 67 L. J. P. C. 40; 78 L. T. 365; 46 W. R. 56172, 112	
Syers <i>v.</i> Metropolitan Board of Works (1877), 36 L. T. 277 ...68, 77, 123, 178, 179	
Symington <i>v.</i> Caledonian Rail. Co., [1912] A. C. 87; 81 L. J. P. C. 155; 106 L. T. 193; 56 S. J. 87 137	

T.

Tab—Tin	PAGE
Tabernacle Permanent Building Society <i>v.</i> Knight, [1891] 2 Q. B. 63; [1892] A. C. 298; 62 L. J. Q. B. 50; 67 L. T. 483; 41 W. R. 207; 56 J. P. 709	188
Taff Vale Rail. Co. <i>v.</i> Cardiff Rail. Co., [1917] 1 Ch. 299; 86 L. J. Ch. 129; 115 L. T. 800	11, 16, 17, 23
Taff Vale Rail. Co. <i>v.</i> Pontypridd U. C. (1905), 93 L. T. 126; 69 J. P. 351; 3 L. G. R. 1339	23, 24, 304
Tanner <i>v.</i> Swindon, &c. Rail. Co. (1881), 45 L. T. 209	211, 212, 219, 220, 240, 459
Tatton <i>v.</i> Staffordshire Waterworks Co. (1879), 44 J. P. 106	15
Tawney <i>v.</i> Lynn and Ely Rail. Co. (1847), 16 L. J. Ch. 282; 4 Rail. Cas. 615	79, 86
Tayleur <i>v.</i> Dolter Electric Traction, Ltd. (1907), 51 S. J. 702 ...	163
Taylor, <i>Re</i> (1821), 5 B. & Ald. 217	191
Taylor, <i>Re</i> (1849), 1 H. & Tw. 432; 1 Macn. & G. 210; 6 Rail. Cas. 741	49, 50, 277
Taylor's Estate, <i>In re</i> (1871), 40 L. J. Ch. 454	254
Taylor <i>v.</i> Chichester, &c. Rail. Co. (1870), L. R. 4 H. L. 628; 39 L. J. Ex. 217; 23 L. T. 657	266
Taylor <i>v.</i> Clemson (1842), 2 Q. B. 978; 11 Cl. & F. 610; 8 Jur. 833.	214
Taylor <i>v.</i> Oldham Corporation (1876), 4 Ch. D. 395; 46 L. J. Ch. 105; 35 L. T. 696; 25 W. R. 178	343
Temple Pier Co. <i>v.</i> Metropolitan Board of Works (1865), 34 L. J. Ch. 262; 12 L. T. 369; 13 W. R. 535; 11 Jur. N. S. 337	93
Tennant <i>v.</i> Belfast (Borough of) (1847), 11 Ir. L. R. 290	218
Teulière <i>v.</i> St. Mary Abbot's, Kensington, Vestry (1885), 30 Ch. D. 642; 55 L. J. Ch. 23; 53 L. T. 422; 50 J. P. 53	352
Thackwray and Young's Contract, <i>In re</i> (1888), 40 Ch. D. 34; 58 L. J. Ch. 72; 59 L. T. 815; 37 W. R. 74	314
Thames Conservators <i>v.</i> Victoria Station, &c. Rail. Co. (1868), L. R. 4 C. P. 59; 38 L. J. C. P. 4	115
Thames Tunnel (Rotherhithe and Ratcliff) Act, 1900, <i>In re</i> , [1908] 1 Ch. 493; 77 L. J. Ch. 330; 98 L. T. 488; 72 J. P. 153; 24 Times L. R. 346	246
Thavie's Charity (Trustees of), <i>Ex parte</i> , [1905] 1 Ch. 403; 74 L. J. Ch. 326; 92 L. T. 287; 53 W. R. 346	279
Thicknesse <i>v.</i> Lancaster Canal Co. (1838), 4 M. & W. 472; 3 Jur. 11	11, 12, 78
Thomas <i>v.</i> Barry Dock, &c. Co. (1889), 5 Times L. R. 360	67, 68
Thomas <i>v.</i> Daw (1866), L. R. 2 Ch. 1; 36 L. J. Ch. 201; 15 L. T. 200; 15 W. R. 113	68, 350, 351
Thompson <i>v.</i> Hammersmith Corporation, [1906] 1 Ch. 299; 75 L. J. Ch. 129; 94 L. T. 135; 54 W. R. 279; 70 J. P. 100; 4 L. G. R. 331; 22 Times L. R. 179	351, 352
Thompson <i>v.</i> Tottenham and Forest Gate Rail. Co. (1892), 67 L. T. 416; 57 J. P. 181; 8 Times L. R. 602	42, 80
Thorburn <i>v.</i> Barnes (1867), L. R. 2 C. P. 384; 36 L. J. C. P. 184; 16 L. T. 10; 15 W. R. 623	235
Thurrock Grays and Tilbury Joint Sewerage Board <i>v.</i> Goldsmith (1914), 79 J. P. 17	151
Tid St. Giles' Charity (Trustees of), <i>Ex parte</i> (1868), 17 W. R. 758.	257
Tink <i>v.</i> Rundle (1849), 10 Beav. 318	49

Tiv—Uni

PAGE

Tiverton, &c. Rail. Co. v. Loosemore (1884), 9 App. Cas. 480; 53 L. J. Ch. 812; 50 L. T. 637; 32 W. R. 929; 48 J. P. 372 (<i>and see</i> Loosemore v. Tiverton, &c. Rail. Co.) ...28, 55, 56, 67, 79, 84, 87, 88, 90, 92, 94, 100, 101, 102, 138	
Todd, Birleston & Co. and North Eastern Rail. Co., <i>In re</i> , [1903] 1 K. B. 603; 72 L. J. K. B. 337; 88 L. T. 366; 67 J. P. 105; 19 Times L. R. 249	137
Todd v. Metropolitan District Rail. Co. (1871), 24 L. T. 435; 19 W. R. 720	168, 204, 217
Tomlin v. Budd (1874), L. R. 18 Eq. 368; 43 L. J. Ch. 627; 22 W. R. 529	314
Tooke's Trusts, <i>In re</i> (1852), 16 Jur. 708; 1 Drew. 264; 21 L. J. Ch. 402	283
Topple, <i>Ex parte</i> (1871), 25 L. T. 407; 19 W. R. 1058	276
Torrington and Okehampton Railway Bill, <i>In re</i> , [1907] 1 Ch. 186; 76 L. J. Ch. 175	384
Tottenham and Hampstead Junction Rail. Co., <i>In re</i> (1866), 14 W. R. 669	98
Tower v. Eastern Counties Rail. Co. (1843), 3 Rail. Cas. 374..68, 241	
Trafford, <i>Ex parte</i> (1837), 2 Y. & O. (Ex.) 522	253
Treadwell v. London and South Western Rail. Co. (1884), 54 L. J. Ch. 565; 51 L. T. 894; 33 W. R. 272	42, 78
Trent-Stoughton v. Barbados Water Supply Co., [1893] A. C. 502; 62 L. J. P. C. 123; 69 L. T. 164	109
Trinity College, Cambridge, <i>Ex parte</i> (1868), 18 L. T. 849	254
Trinity House (Corporation of), <i>Ex parte</i> (1849), 3 Hare, 95 ...	278
Tugwell, <i>In re</i> (1884), 27 Ch. D. 309; 53 L. J. Ch. 1006; 51 L. T. 83; 33 W. R. 132	49, 50
Tunbridge Wells Corporation v. Baird, [1896] A. C. 434; 65 L. J. Q. B. 451; 74 L. T. 385; 60 J. P. 788	72, 506
Turner's Estate, <i>Re</i> (1862), 10 W. R. 128; 5 L. T. 524	282
Turner v. Midland Rail. Co., [1911] 1 K. B. 832; 80 L. J. K. B. 516; 104 L. T. 347; 75 J. P. 283	230
Turner v. Sheffield and Rotherham Rail. Co. (1842), 10 M. & W. 425; 3 Rail. Cas. 222	149
Turnham v. Metropolitan Rail. Co. (1863), 32 L. J. M. C. 249; 8 L. T. 280; 14 O. B. N. S. 212; 11 W. R. 695	216
Tynemouth Corporation and Duke of Northumberland, <i>In re</i> (1903), 89 L. T. 557; 67 J. P. 425; 19 Times L. R. 630	110, 111, 119
Tyson v. London (Mayor, &c.) (1871), L. R. 7 C. P. 18; 41 L. J. C. P. 6; 25 L. T. 640; 20 W. R. 112	68, 82, 122, 179

U.

Underwood v. Bedford and Cambridge Rail. Co. (1861), 11 C. B. N. S. 442; 31 L. J. C. P. 10; 7 Jur. N. S. 941; 10 W. R. 106; 5 L. T. 581	196, 241
United Land Co. v. Great Eastern Rail. Co. (1875), L. R. 10 Ch. 586; 44 L. J. Ch. 685; 33 L. T. 292; 23 W. R. 896	450
University Life Assurance Co. v. Metropolitan Rail. Co., (1866) W. N. 167	67, 75, 90

Utt—War

PAGE

Uttley v. Todmorden Local Board (1874), 44 L. J. C. P. 19; 31 L. T. 445	150, 511
Uxbridge and Rickmansworth Rail. Co., <i>In re</i> (1890), 43 Ch. D. 536; 59 L. J. Ch. 409; 62 L. T. 347; 38 W. R. 644 ...	55, 64, 66, 87, 207, 384

V.

Vale of Neath Rail. Co., <i>Re</i> , (1866) W. N. 78	253
Vane v. Cockermouth Rail. Co. (1865), 12 L. T. 821; 13 W. R. 1015.	28
Vaudrey's Trusts, <i>Re</i> (1861), 3 Giff. 224; 30 L. J. Ch. 885; 7 Jur. N. S. 753	279
Vaughan v. Taff Vale Rail. Co. (1860), 5 H. & N. 679; 29 L. J. Ex. 247; 6 Jur. N. S. 899; 2 L. T. 394; 8 W. R. 549	150, 151, 159

W.

Wade, <i>Re</i> (1849), 1 H. & Tw. 202	49
Wadham v. North Eastern Rail. Co. (1884), 14 Q. B. D. 747; 16 Q. B. D. 227; 54 L. J. Q. B. 344; 55 L. J. Q. B. 272; 51 L. T. 684; 52 L. T. 894; 33 W. R. 215; 34 W. R. 342; 49 J. P. 299; 1 Times L. R. 148	156, 158, 159
Wainwright v. Ramsden (1839), 5 M. & W. 602; 9 L. J. Ex. 120; 1 Rail. Cas. 714	127
Wakefield v. Llanelly Rail. and Dock Co. (1865), 3 De G. J. & S. 11; 13 W. R. 823; 12 L. T. 509; 11 Jur. N. S. 456; 34 Beav. 245	193, 194, 228
Wakefield Local Board v. West Riding, &c. Rail. Co. (1865), L. R. 1 Q. B. 84; 6 B. & S. 794; 10 Cox, C. C. 162; 35 L. J. M. C. 69; 14 W. R. 100	181
Wale v. Westminster Palace Hotel Co. (1860), 8 C. B. N. S. 276; 7 Jur. N. S. 26; 9 W. R. 14	4, 232, 234
Walker's Estate, <i>In re</i> (1853), 1 Drew. 508; 22 L. J. Ch. 888; 17 Jur. 706; 1 W. R. 378; 21 L. T. (O. S.) 148	250
Walker and Beckenham Local Board, <i>Re</i> (1884), 50 L. T. 207; 48 J. P. 264	198, 233, 344
Walker and London and Blackwall Rail. Co., <i>Re</i> , <i>R. v. Middlesex</i> (Sheriff of) (1842), 3 Q. B. 744; 3 Rail. Cas. 396; 3 G. & D. 549; 12 L. J. Q. B. 88; 7 Jur. 323, 1154	94, 211, 217
Walker v. Ware, &c. Rail. Co. (1866), L. R. 1 Eq. 195; 35 L. J. Ch. 94; 35 Beav. 52; 12 Jur. N. S. 18; 14 W. R. 158 ...	61, 102, 230
Walshaw v. Brighouse Corporation, [1899] 2 Q. B. 286; 15 Times L. R. 403	511
Warburton v. Haslingden Local Board (1879), 48 L. J. Q. B. 451..	340, 519
Ward, <i>In re</i> (1862), 11 W. R. 88	235
Ware and Regent's Canal Co., <i>Re</i> (1854), 9 Ex. 395; 23 L. J. Ex. 145; 7 Rail. Cas. 780 (<i>and see</i> Regent's Canal Co. v. Ware) ...	169, 224, 299
Ware v. London, Brighton and South Coast Rail. Co. (1883), 52 L. J. Ch. 198; 47 L. T. 541; 31 W. R. 228	306
Ware v. Regent's Canal Co. (1858), 3 De G. & J. 212; 28 L. J. Ch. 153	45, 46, 154
Warr (Frank) & Co. v. London County Council, [1904] 1 K. B. 713; 73 L. J. K. B. 362; 90 L. T. 368; 52 W. R. 405; 68 J. P. 335; 20 Times L. R. 346; 2 L. G. R. 723	10, 124

Wat—Wig	PAGE
Waterlow (<i>or</i> Waterton) <i>v.</i> Burt (1870), 39 L. J. Ch. 425; 18 W. R. 683	293
Watts <i>v.</i> Watts (1874), L. R. 17 Eq. 217; 43 L. J. Ch. 77; 29 L. T. 671; 22 W. R. 105	56
Wear (River) Commissioners <i>v.</i> Adamson (1877), 2 App. Cas. 743; 47 L. J. Q. B. 193; 37 L. T. 543; 26 W. R. 217	1
Webb <i>v.</i> Direct London and Portsmouth Rail. Co. (1851), 9 Hare, 129; 1 De G. M. & G. 521; 21 L. J. Ch. 337; 16 Jur. 323 ...60, 88	
Webb <i>v.</i> Manchester and Leeds Rail. Co. (1839), 4 Myl. & Cr. 116; 1 Rail. Cas. 576	24
Webster's Settled Estates, <i>Re</i> (1854), 2 Sm. & Giff., Appx. vi... 263, 264	
Weld <i>v.</i> South Western Rail. Co. (1864), 32 Beav. 340; 33 L. J. Ch. 142; 11 W. R. 448; 9 Jur. N. S. 510	66
Wells <i>v.</i> Chelmsford Local Board (1880), 15 Ch. D. 108; 49 L. J. Ch. 827; 43 L. T. 378; 29 W. R. 381; 45 J. P. 6	271
Western Counties Rail. Co. <i>v.</i> Windsor and Annapolis Rail. Co. (1882), 7 App. Cas. 178; 51 L. J. P. C. 43; 46 L. T. 351	1
Westfield and Metropolitan Rail. Cos., <i>In re</i> , <i>R. v.</i> Manley Smith (1883), 12 Q. B. D. 481; 53 L. J. Q. B. 115; 32 W. R. 275 ... 203, 216, 218	
West India Electric Co. <i>v.</i> Kingston Corporation, [1914] A. C. 986; 83 L. J. P. C. 380; 111 L. T. 1038	30
West Lancashire Rural District Council <i>v.</i> Lancashire and Yorkshire Rail. Co., [1903] 2 K. B. 394; 72 L. J. K. B. 675; 89 L. T. 139; 51 W. R. 694; 67 J. P. 410; 19 Times L. R. 625; 1 L. G. R. 788	444
Westminster Corporation <i>v.</i> London and North Western Rail. Co., [1905] A. C. 426; 74 L. J. Ch. 629; 93 L. T. 143; 54 W. R. 129; 3 L. G. R. 1120; 69 J. P. 425; 21 Times L. R. 686 ...72, 506	
Westminster (Dean and Chapter of), <i>Ex parte</i> (1854), 23 L. J. Ch. 144; 18 Jur. 1113	268
West Yorkshire Tramways Act, 1906, <i>In re</i> , [1913] 1 Ch. 170; 82 L. J. Ch. 98; 108 L. T. 18; 11 L. G. R. 78; 57 S. J. 111; 29 Times L. R. 115	385
Whatley <i>v.</i> Morland (1833), 2 Dowl. P. C. 249; 2 C. & M. 347; 3 L. J. Ex. 58	193
Wheeler <i>v.</i> Metropolitan Board of Works (1869), L. R. 4 Ex. 303; 38 L. J. Ex. 165	301
White's Charities, <i>In re</i> , Charity Commissioners <i>v.</i> London Corporation, [1898] 1 Ch. 659; 67 L. J. Ch. 430; 78 L. T. 550; 46 W. R. 478	72
White <i>v.</i> Commissioners of Public Works (1870), 22 L. T. 591 ... 118	
Whitehouse <i>v.</i> Wolverhampton, &c. Rail. Co. (1869), L. R. 5 Ex. 6; 39 L. J. Ex. 1; 21 L. T. 558; 18 W. R. 147 ...135, 142, 169, 454	
Whitfield (Incumbent of), <i>Re</i> (1860), 1 J. & H. 610; 9 W. R. 764; 30 L. J. Ch. 816; 7 Jur. N. S. 909	254
Whitling (<i>or</i> Whiting), <i>Re</i> (1861), 9 W. R. 830; 7 Jur. N. S. 754.. 263	
Whitmore <i>v.</i> Smith (1860), 29 L. J. Ex. 402; 5 H. & N. 824; (1861), 31 L. J. Ex. 107; 5 L. T. 618; 8 Jur. N. S. 514; 10 W. R. 253; 7 H. & N. 509 (Exch. Ch.)196, 235, 241	
Wight's Devised Estates, <i>Re</i> (1857), 6 W. R. 718	256
Wigram <i>v.</i> Fryer (1887), 36 Ch. D. 87; 56 L. J. Ch. 1098; 57 L. T. 255; 36 W. R. 100	96, 152, 153

Wil—Woo	PAGE
Wild v. Woolwich B. C., [1910] 1 Ch. 35; 79 L. J. Ch. 126; 101 L. T. 580; 74 J. P. 33; 8 L. G. R. 203; 54 S. J. 64; 26 Times L. R. 67	41, 42, 80, 352, 353
Wilkes' Estate, <i>In re</i> (1881), 16 Ch. D. 597; 50 L. J. Ch. 199 ...	268
Wilkins v. Birmingham (Mayor, &c. of) (1883), 25 Ch. D. 78; 53 L. J. Ch. 93; 49 L. T. 468; 32 W. R. 118; 48 J. P. 231 ...	68, 81, 82, 122, 356, 357
Wilkinson, <i>Ex parte</i> (1843), 3 De G. & Sm. 633; 19 L. J. Ch. 257; 14 L. T. (O. S.) 171; 14 Jur. 301	269
Wilkinson v. Hull, &c. Rail. and Dock Co. (1882), 20 Ch. D. 323; 51 L. J. Ch. 788; 46 L. T. 455; 30 W. R. 617	29, 31
Willesden Local Board and Wright, <i>In re</i> , [1896] 2 Q. B. 412; 65 L. J. Q. B. 567; 75 L. T. 13; 44 W. R. 676; 60 J. P. 708	198, 233, 344
Wiley v. South Eastern Rail. Co. (1849), 1 Macn. & G. 58; 18 L. J. Ch. 201; 1 H. & Tw. 56; 6 Rail. Cas. 108; 13 Jur. 241 ...	93, 99
Williams' Estate, <i>In re</i> (1871), L. R. 12 Eq. 488	274
Williams v. Aylesbury, &c. Rail. Co. (1873), 28 L. T. 547; 21 W. R. 819	61, 102, 230
Williams v. Aylesbury, &c. Rail. Co. (1874), L. R. 9 Ch. 684; 43 L. J. Ch. 825; 31 L. T. 521	256
Williams v. East London Rail. Co. (1869), 18 W. R. 159; 21 L. T. 524	299
Williams v. Great Eastern Rail. Co. (1868), 16 W. R. 821; 18 L. T. 458	61
Williams v. South Wales Rail. Co. (1849), 3 De G. & Sm. 354; 13 Jur. 443; 13 L. T. (O. S.) 6	91
Wilson's (Sir Thomas) Estate, <i>Re</i> (1862-3), 3 De G. J. & S. 410; 2 J. & H. 619; 32 L. J. Ch. 191; 9 Jur. N. S. 1043; 7 L. T. 772; 11 W. R. 295	267, 287
Wilson v. Foster (1859), 26 Beav. 398; 28 L. J. Ch. 410; 5 Jur. N. S. 113; 7 W. R. 172	264
Wilson v. West Hartlepool Rail. Co. (1865), 2 De G. J. & S. 475; 34 Beav. 187; 34 L. J. Ch. 241; 11 L. T. 692; 11 Jur. 124; 13 W. R. 361	54, 55
Wimbledon and Dorking Railway Act, <i>In re</i> (1863), 9 L. T. 703 ...	97
Winchester (Bishop of) v. Mid-Hants Rail. Co. (1867), L. R. 5 Eq. 17; 37 L. J. Ch. 64; 17 L. T. 161; 16 W. R. 72	57, 61
Winchester College (Warden of), <i>Ex parte</i> (1865), 14 W. R. 788; 14 L. T. 543	253
Winder, <i>Ex parte</i> (1877), 6 Ch. D. 696; 46 L. J. Ch. 572; 25 W. R. 768	271, 273
Windsor, &c. Rail. Co., <i>Re</i> (1849), 12 Beav. 522	282
Wing v. Tottenham and Hampstead Junction Rail. Co. (1868), L. R. 3 Ch. 740; 37 L. J. Ch. 654; 16 W. R. 1098	102, 230
Withington Local Board v. Manchester Corporation, [1893] 2 Ch. 19; 62 L. J. Ch. 393; 68 L. T. 330; 41 W. R. 306; 57 J. P. 340. 31, 32	
Wombwell v. Barnsley (Mayor, &c. of) (1877), 36 L. T. 708	203
Wood's Estate, <i>In re</i> (1871), L. R. 10 Eq. 572; 40 L. J. Ch. 59 ...	269
Wood's Estate, <i>In re</i> (1886), 31 Ch. D. 607; 55 L. J. Ch. 488; 54 L. T. 145; 34 W. R. 375	4
Wood's Settled Estates, <i>In re</i> (1875), L. R. 20 Eq. 372	259

TABLE OF CASES.

lxxi

Woo—Zic

PAGE

Wood <i>v.</i> Boucher (1871), L. R. 6 Ch. 77; 10 Eq. 572; 40 L. J. Ch. 112; 23 L. T. 723; 19 W. R. 234	264
Wood <i>v.</i> Charing Cross Rail. Co. (1864), 33 Beav. 290	67, 171
Wood <i>v.</i> Epsom and Leatherhead Rail. Co. (1860), 8 C. B. N. S. 731; 30 L. J. C. P. 83	73
Wood <i>v.</i> Lillies (1892), 61 L. J. Ch. 158	172
Wood <i>v.</i> North Staffordshire Rail. Co. (1849), 3 De G. & Sm. 368; 13 Jur. 466	208
Wood <i>v.</i> Stourbridge, &c. Rail. Co. (1864), 16 C. B. N. S. 222	155
Woodburn's Trust, <i>Re</i> (1866), 13 L. T. 237	282
Woodford Land and Building Co. <i>v.</i> Woodford U. C. (1921), 19 L. G. R. 559	371, 372
Wood Green Gospel Hall Charity, <i>In re, Ex parte</i> Middlesex C. C., [1909] 1 Ch. 263; 78 L. J. Ch. 193; 100 L. T. 194	279
Woolwich Borough Council, <i>Ex parte</i> , [1908] W. N. 56; 24 Times L. R. 370	257
Wootton's Estate, <i>In re</i> (1866), L. R. 1 Eq. 589; 35 L. J. Ch. 305..	268
Wootton's Trusts, <i>Re</i> (1863), 7 L. T. 620; 1 N. R. 193	56
Worsley <i>v.</i> South Devon Rail. Co. (1851), 16 Q. B. 539; 20 L. J. Q. B. 254; 15 Jur. 970	101, 210, 211
Wright, <i>Ex parte</i> (1831), 2 B. & Ad. 348	123
Wright <i>v.</i> Howson (1888), 4 Times L. R. 386	193
Wrigley <i>v.</i> Lancashire and Yorkshire Rail. Co. (1863), 4 Giff. 352; 9 Jur. N. S. 710; 8 L. T. 267	19
Wyatt <i>v.</i> Gems, [1893] 2 Q. B. 225; 62 L. J. M. C. 158; 17 Cox, C. C. 679; 69 L. T. 456; 42 W. R. 28; 57 J. P. 665	520
Wycombe Rail. Co. <i>v.</i> Donnington Hospital (1866), L. R. 1 Ch. 268; 14 W. R. 359; 12 Jur. N. S. 347; 14 L. T. 179 ...	58, 174, 229

Y.

Yarmouth (Mayor, &c. of) <i>v.</i> Simmons (1878), 10 Ch. D. 518; 47 L. J. Ch. 792; 38 L. T. 881; 26 W. R. 802	17
Yates, <i>Ex parte</i> (1869), 17 W. R. 872; 20 L. T. 940	282
Yates <i>v.</i> Blackburn (Mayor, &c. of) (1860), 6 H. & N. 61; 29 L. J. Ex. 447; 2 L. T. 746	190, 201
Yeadon Local Board and Yeadon Waterworks Co., <i>In re</i> (1889), 41 Ch. D. 52; 58 L. J. Ch. 563; 60 L. T. 550; 37 W. R. 360... 340, 510	
York and North Midland Rail. Co. <i>v.</i> R. (1853), 1 E. & B. 178, 858; 22 L. J. Q. B. 41, 225; 7 Rail. Cas. 266; 17 Jur. 62; 1 W. R. 35	66, 67
Youl, <i>In re</i> (1873), L. R. 16 Eq. 107; 42 L. J. Ch. 900	252
Young <i>v.</i> Leamington (Mayor, &c. of) (1883), 8 App. Cas. 517; 52 L. J. Q. B. 713; 49 L. T. 1; 31 W. R. 925	54
Young <i>v.</i> North British Rail. Co. (1888), 15 R. (H. L.) 32	70
Ystalyfera Iron Co. <i>v.</i> Neath and Brecon Rail. Co. (1873), L. R. 17 Eq. 142; 43 L. J. Ch. 476; 29 L. T. 662; 22 W. R. 149 ...	65, 79, 84

Z.

Zick <i>v.</i> London United Tramways, Ltd., [1908] 2 K. B. 126; 98 L. T. 841; 72 J. P. 257; 24 Times L. R. 577; 52 S. J. 456...81, 124	
---	--

TABLE OF STATUTES.

	PAGE
37 Hen. VIII. c. 12	10, 76
18 & 19 Car. II. c. 8 (Act for the Rebuilding of London after the Great Fire)	315
29 Car. II. c. 3 (Statute of Frauds)	56
57 Geo. III. c. xxix. (Metropolitan Paving Act, 1817 ("Michael Angelo Taylor's Act"))	41, 42, 43, 256, 262, 277, 346, 350*—352*, 520—531
11 Geo. IV. c. lxx. (Hungerford Market Act)	123
6 & 7 Will. IV. c. 71 (Tithe Act, 1836)	9
7 Will. IV. & 1 Vict. c. 83 (Parliamentary Documents Deposit Act, 1837)	434
2 & 3 Vict. c. 71 (Metropolitan Police Courts Act, 1839)	181, 433
5 & 6 Vict. c. 55 (Regulation of Railways Act, 1842)	33
c. 79 (Railway Passenger Duty Act, 1842)	617
c. 94 (Defence Act, 1842)	335*, 336*, 379, 489—498 , 500, 502, 503
6 & 7 Vict. c. 73 (Solicitors Act, 1843)	198, 203
8 & 9 Vict. c. 16 (Companies Clauses Act, 1845)	53, 54, 74
c. 18 (Lands Clauses Consolidation Act, 1845)	389—435
s. 1	4*
s. 2	47*
s. 3	8*, 12, 17, 47*, 180*, 210*, 239
s. 5	6*
s. 6	17
s. 7	47*—52*, 57, 76, 174, 248, 588
s. 9	57*—59*, 143, 173*, 174*
s. 10	62*, 63*
s. 11	62*, 63*, 312
s. 12	33*
s. 13	33*, 305
s. 14	33, 52*
s. 15	59*
s. 16	9, 65*—67*, 87, 90, 147, 207
s. 17	65*—67*
s. 18	15, 17, 42, 55, 67*—88*, 143, 185, 209
s. 19	77*
s. 20	77*
s. 21	42, 186*, 209*

Text, pp. 1—387. Appendix of Statutes, pp. 389—615.

Folios with an asterisk [*] denote that the Act or section in question is specially dealt with.

Folios in block type [**654**] denote the pages in the Appendix where the statute in question is printed.

TABLE OF STATUTES.

lxxiii

8 & 9 Vict. c. 18 (Lands Clauses Consolidation Act, 1845),	PAGE
s. 22	56, 102, 103, 177*, 222
s. 23	56, 74, 86, 87, 103, 175, 185*, 192, 196, 199, 200, 205*, 223
s. 24	86, 102, 181*, 183, 222, 233
s. 25	56, 86, 189*—191*, 313
s. 26	189, 191*, 192*, 313
s. 27	189, 192*, 313
s. 28	189, 192*, 313
s. 29	66, 189, 191*, 192*, 313
s. 30	189, 191*, 192*, 313
s. 31	196*, 313
s. 32	193*, 313, 539
s. 33	189*, 313, 539
s. 34	115, 201*—204*, 217*, 313, 327
s. 35	194, 197*, 198, 203, 313, 386, 539
s. 36	191*, 313, 539
s. 37	56, 199*, 237, 241*, 313, 539
s. 38	56, 87, 143, 201, 209*, 215*, 216, 217, 313
s. 39	56, 103, 209*, 211, 313
s. 40	56, 103, 210*, 313
s. 41	56, 103, 211*, 313
s. 42	56, 103, 212*, 313
s. 43	56, 103, 212*, 213*, 313
s. 44	56, 103, 212*, 313
s. 45	56, 103, 213*
s. 46	56, 103, 213*, 216
s. 47	56, 103, 213*
s. 48	56, 103, 212*
s. 49	56, 103, 143, 161, 168, 219, 227*, 230
s. 50	56, 103, 230
s. 51	56, 115, 215*, 217*
s. 52	56, 218*
s. 53	56, 218*, 247
s. 54	56, 213*
s. 55	56, 213*
s. 56	56, 213*
s. 57	56, 213*
s. 58	52, 70, 98, 143, 173, 175*, 186, 271
s. 59	52, 70, 98, 175*, 186, 213
s. 60	52, 70, 175*, 186, 213
s. 61	52, 70, 175*, 186, 213
s. 62	52, 70, 175*, 177*, 186, 213
s. 63	143, 161, 168, 173, 183, 186, 213
s. 64	52, 70, 175*, 186*, 202, 237
s. 65	52, 70, 175*, 187*, 237
s. 66	52, 70, 175*, 187
s. 67	52, 70, 175*, 187
s. 68	7, 11, 14, 75, 86, 92, 100, 102, 103, 104, 125, 143, 147, 153, 160, 167, 169, 170, 187, 200, 204, 208, 209, 212, 216, 217, 223, 231*—235*, 340, 348
s. 69	248*, 249*, 250*, 253*—9*, 258—265, 269, 280, 288, 365, 543
s. 70	248, 250, 252, 262*—265*, 365, 543
s. 71	248*, 249*, 250*, 269, 288, 365, 543
s. 72	248, 249*, 365, 543

Text, pp. 1—387. Appendix of Statutes, pp. 389—615.

Folios with an asterisk [*] denote that the Act or section in question is specially dealt with.

Folios in block type [654] denote the pages in the Appendix where the statute in question is printed.

8 & 9 Vict. c. 18 (Lands Clauses Consolidation Act, 1845),	PAGE
s. 73	248, 266*, 267*, 269, 288, 365, 543
s. 74	248, 258, 267*, 268*, 365, 543
s. 75	269*, 270*, 365, 543
s. 7660, 92, 176, 228, 270*, 271*, 272, 288, 365, 543	
s. 77	176, 228, 270*, 271*, 288, 365, 543
s. 78	270, 271*, 272*, 365, 543
s. 79	270, 273*, 274*, 365, 543
s. 80	94, 97, 98, 177, 274*—284*, 299, 365, 543
s. 81	49, 244*
s. 82	245*, 246*, 247*
s. 83	247*, 295
s. 84	89*, 91, 92, 93, 94, 105, 365, 371, 560, 561, 591, 592
s. 85	13, 60, 61, 65, 67, 84, 86, 89*—105*, 107, 139, 143, 176, 231, 250, 274, 296, 365, 371, 383, 560, 561, 591, 592, 606
s. 86	89*, 92*—96*, 365, 371, 560, 561, 591, 592
s. 87	89*, 92*—94*, 231, 250, 365, 371, 560, 561, 591, 592
s. 88	89*, 92*—96*, 365, 371, 560, 561, 591, 592
s. 89	89*, 92*—94*, 105*, 106*, 365, 371, 560, 561, 591, 592
s. 90	90*, 92*—94*, 105*, 365, 371, 560, 561, 591, 592
s. 91	94, 247*
s. 9235*—44*, 78, 80, 94, 209, 299, 358, 386, 541, 614	
s. 93	34, 44*, 45*, 442
s. 94	34*, 215
s. 95	120*, 121*, 285*, 287*
s. 96	120*, 121*, 285, 286*, 287*
s. 97	120*, 121*, 285, 288*
s. 98	120*, 121*, 285, 288*
s. 99	285, 289*
s. 100	285, 289*
s. 101	285
s. 102	176, 285, 290*
s. 103	285, 290*
s. 104	285, 290*, 291*
s. 105	285, 290*, 291*
s. 106	176*, 285, 292*
s. 107	176*, 285, 292*
s. 108	285, 293*, 294*
s. 109	285, 295*
s. 110	285, 294*
s. 111	285, 295*
s. 112	285, 295*
s. 113	285, 295*
s. 114	285, 296*
s. 115	9, 285, 297*
s. 116	9, 285, 297*
s. 117	9, 285, 298*
s. 118	9, 285, 298*
s. 119	41, 126, 224, 285, 298*, 299*
s. 120	285
s. 121	68, 77, 83, 102, 103, 162, 177*—180*, 183, 185, 187, 205, 206, 222, 231, 233, 285, 357, 365
s. 122	180*, 285

Text, pp. 1—387. Appendix of Statutes, pp. 389—615.

Folios with an asterisk [*] denote that the Act or section in question is specially dealt with.

Folios in block type [654] denote the pages in the Appendix where the statute in question is printed.

TABLE OF STATUTES.

lxxv

8 & 9 Vict. c. 18 (Lands Clauses Consolidation Act, 1845),	PAGE
s. 123	78*
s. 12452, 68*—70*, 90, 91, 128, 360, 542	
s. 125	52, 68*—70*, 90
s. 126	52, 68*—70*, 90
s. 127 ...304*—9*, 312, 314, 339, 365, 375, 556, 569, 611	
s. 12844, 305, 310, 311*—314*, 349, 375, 442, 569	
s. 129	305, 313*, 314, 349, 375, 569
s. 130	188*, 305, 314, 349, 375, 569
s. 131	305, 314*
s. 132	314*
s. 13347, 285, 299*—302*, 357, 366, 549	
s. 138	62
s. 140	218
s. 145	237*
Schedule A.	244
Schedule B.	244
c. 20 (Railways Clauses Consolidation Act, 1845)	11, 15, 22, 29, 32, 33, 74, 79, 95, 127, 128, 131*—136*, 141, 143, 144, 145, 148, 165, 168, 183, 197, 305, 333, 365, 372, 376, 380, 440—457 , 461, 463, 517, 556, 578, 579, 586, 590, 611, 617
c. 33 (Railways Clauses Consolidation (Scotland) Act, 1845)	135, 586, 590
10 & 11 Vict. c. 14 (Markets and Fairs Clauses Act, 1847)	387
c. 15 (Gas Works Clauses Act, 1847)	11
c. 17 (Waterworks Clauses Act, 1847)	11, 14, 23, 74, 128, 130, 132, 134*, 135*, 136, 145*, 146*, 147*, 148, 160, 161, 163, 183, 184, 343, 457, 460—467 , 513
c. 27 (Harbours, Docks and Piers Clauses Act, 1847)	23, 386
c. 34 (Towns Improvement Clauses Act, 1847)	369, 386
c. 38 (Land Drainage Act, 1847)	377
c. 65 (Cemeteries Clauses Act, 1847)	387
c. cclxxx. (London City Improvement Act, 1847)	82
11 & 12 Vict. c. 43 (Summary Jurisdiction Act, 1848)	182, 233
c. 63 (Public Health Act, 1848)	341
13 & 14 Vict. c. 60 (Trustee Act, 1850)	51
c. 83 (Abandonment of Railways Act, 1850)	304, 383
14 & 15 Vict. c. 70 (Railways (Ireland) Act, 1851)	67, 81, 389
15 & 16 Vict. c. 79 (Inclosure Act, 1852)	292, 420
c. 81 (County Rates Act, 1852)	302
16 & 17 Vict. c. 107 (Customs Consolidation Act, 1853)	380
17 & 18 Vict. c. 67 (Defence Act, 1854)	499
c. 97 (Inclosure Act, 1854)	292, 420, 467—9
c. 125 (Common Law Procedure Act, 1854)	87, 187, 197, 207, 232, 233, 235, 271
18 & 19 Vict. c. 58 (Duchy of Lancaster Lands Act, 1855)	607
c. 120 (Metropolis Management Act, 1855)	346, 347, 348, 349, 353, 537
c. 124 (Charitable Trusts Act, 1855)	59

Text, pp. 1—387. Appendix of Statutes, pp. 389—615.

Folios with an asterisk [*] denote that the Act or section in question is specially dealt with.

Folios in block type [**654**] denote the pages in the Appendix where the statute in question is printed.

	PAGE
19 & 20 Vict. c. 83 (Coastguard Service Act, 1856)	380
c. 112 (Metropolis Management Amendment Act, 1856)..	346
21 & 22 Vict. c. 73 (Stipendiary Magistrates Act, 1858)	181
c. 104 (Metropolis Management Amendment Act, 1858)..	346
22 & 23 Vict. c. 21 (Queen's Remembrancer Act, 1859)	500
23 & 24 Vict. c. 106 (Lands Clauses Consolidation Acts Amendment Act, 1860)	3, 47, 62, 280, 335, 345, 393, 394, 435—8
c. 112 (Defence Act, 1860)	500—504
24 & 25 Vict. c. 133 (Lan. Drainage Act, 1861)	377
25 & 26 Vict. c. 93 (Thames Embankment Act, 1862)	13
c. 102 (Metropolis Management Amendment Act, 1862)..	346, 347, 349, 350
26 & 27 Vict. c. 92 (Railways Clauses Act, 1863)	442, 443, 457—8 , 613
c. 112 (Telegraph Act, 1863)	378, 600, 601, 605
27 & 28 Vict. c. 57 (Admiralty Lands and Works Act, 1864)	380
c. 114 (Improvement of Land Act, 1864)	375
c. 121 (Railways Construction Facilities Act, 1864)..	55, 383
c. cccxxii. (Metropolitan District Railways Act, 1864)..	206
28 & 29 Vict. c. 126 (Prisons Act, 1865)	380
29 & 30 Vict. c. 122 (Metropolitan Commons Act, 1866)	585, 589, 596
30 & 31 Vict. c. 127 (Railway Companies Act, 1867)	63, 94, 95, 96, 99, 100, 144, 176, 383, 413, 458
31 & 32 Vict. c. 110 (Telegraph Act, 1868)	378
c. 119 (Regulation of Railways Act, 1868)	219*, 220*, 226, 368, 438, 440, 459 , 601, 602
c. cviii. (Metropolitan District Railway Act, 1868)	314
32 & 33 Vict. c. 18 (Lands Clauses Consolidation Act, 1869) ..	3, 202*, 203*, 280, 345, 438—9 , 440
c. 41 (Poor Rate Assessment and Collection Act, 1869)..	302
c. 73 (Telegraph Act, 1869)	378
c. 114 (Abandonment of Railways Act, 1869)	304, 383
33 & 34 Vict. c. 70 (Gas and Water Works Facilities Act, 1870) ..	14, 387
c. 75 (Elementary Education Act, 1870)	12
c. 78 (Tramways Act, 1870)	333, 384
34 & 35 Vict. c. 41 (Gas Works Clauses Act, 1871)	31
c. 43 (Ecclesiastical Dilapidations Act, 1871)	577
35 & 36 Vict. c. 44 (Court of Chancery (Funds) Act, 1872)	248, 406, 409, 413, 414, 543, 544
36 & 37 Vict. c. 66 (Judicature Act, 1873)	170, 207
37 & 38 Vict. c. 40 (Board of Trade Arbitrations, &c. Act, 1874)	618
38 & 39 Vict. c. 33 (Metropolis Local Management Act, 1875)	346
c. 36 (Artizans' and Labourers' Dwellings Improvement Act, 1875)	68
c. 55 (Public Health Act, 1875)	14, 54, 130, 148, 200, 303, 304, 338*—345*, 346, 348, 355, 364, 366, 463, 506—512 , 513, 515, 516, 517, 519, 520, 538, 547, 563, 571, 584

Text, pp. 1—387. Appendix of Statutes, pp. 389—615.

Folios with an asterisk [*] denote that the Act or section in question is specially dealt with.

Folios in block type [654] denote the pages in the Appendix where the statute in question is printed.

	PAGE
38 & 39 Vict. c. 66 (Statute Law Revision Act, 1875)	62, 431, 434, 436
c. 77 (Judicature Act, 1875)	275
39 & 40 Vict. c. 56 (Commons Act, 1876)	585, 589, 596
c. 62 (Sale of Exhausted Parish Lands Act, 1876)	258
40 & 41 Vict. c. 57 (Supreme Court of Judicature (Ireland) Act, 1877)	408, 409, 410
c. cccxxv. (Metropolitan Street Improvements Act, 1877).	153
41 & 42 Vict. c. 32 (Metropolis Management and Building Acts Amend- ment Act, 1878)	346
c. 42 (Tithe Act, 1878)	10
c. 76 (Telegraph Act, 1878) ...378*, 379*, 600—4 , 604, 605	
42 & 43 Vict. c. 36 (Customs Buildings Act, 1879)	380
c. 49 (Summary Jurisdiction Act, 1879)	181, 182
c. 64 (Artizans' and Labourers' Dwellings Act (1868) Amendment Act, 1879)	316
c. 78 (Supreme Court of Judicature (Officers) Act, 1879).	218
c. cxviii. (Metropolis Management (Thames River Pre- vention of Floods) Amendment Act, 1879).	346, 353*
44 & 45 Vict. c. 41 (Conveyancing and Law of Property Act, 1881) ...	572
c. 44 (Solicitors' Remuneration Act, 1881)	247, 256, 284
c. cli. (Midland Railway Company (Additional Powers) Act, 1881)	16
45 & 46 Vict. c. 14 (Metropolis Management and Building Acts (Amendment) Act, 1882)	346
c. 15 (Commonable Rights Compensation Act, 1882) ...	292, 420, 469—472
c. 38 (Settled Land Act, 1882)	251, 252, 255, 259, 260, 261, 262, 267, 277, 280
c. 50 (Municipal Corporations Act, 1882) ...47. 302, 345*, 437	
c. 54 (Artizans' Dwellings Act, 1882)	316
c. 75 (Married Women's Property Act, 1882)	249, 407
c. cccxii. (Metropolitan Street Improvements Act, 1882).	153
c. clxxxix. (London and South Western Railway Act, 1883)	302
46 Vict. c. 15 (Lands Clauses (Umpire) Act, 1883)	3, 192, 398, 439
46 & 47 Vict. c. 37 (Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883)	74, 130, 343*, 463, 512—514
c. 39 (Statute Law Revision Act, 1883)	438
47 & 48 Vict. c. 43 (Summary Jurisdiction Act, 1884) ...431. 432, 433, 435	
c. 51 (Prisons Act, 1884)	380
50 & 51 Vict. c. 26 (Allotments and Cottage Gardens Compensation for Crops Act, 1887)	576
c. 48 (Allotments Act, 1887)	370, 515, 517
51 & 52 Vict. c. 25 (Railway and Canal Traffic Act, 1888)	604
c. 29 (Lloyd's Signal Stations Act, 1888)	387

Text, pp. 1—387. Appendix of Statutes, pp. 389—615.

Folios with an asterisk [*] denote that the Act or section in question is specially dealt with.

Folios in block type [**654**] denote the pages in the Appendix where the statute in question is printed.

	PAGE
51 & 52 Vict. c. 41 (Local Government Act, 1888)	59, 345, 346, 348, 381, 437, 515 , 571
c. 42 (Mortmain and Charitable Uses Act, 1888)	558, 610
52 & 53 Vict. c. 30 (Board of Agriculture Act, 1889)	292
c. 49 (Arbitration Act, 1889)	34, 108, 188*—200*, 233, 235, 236, 241, 243, 329, 340, 386, 396, 397, 398, 399, 472—8 , 617, 618
c. 63 (Interpretation Act, 1889)	3, 181, 182, 390, 391, 392, 414, 434, 485
53 & 54 Vict. c. 5 (Lunacy Act, 1890)	49
c. 44 (Judicature Act, 1890)	256, 275*, 277, 281
c. 65 (Allotments Act, 1890)	370, 515, 517
c. 69 (Settled Land Act, 1890)	260, 261
c. 70 (Housing of the Working Classes Act, 1890)	68, 141, 205, 221, 260, 261, 301, 316, 330, 354*—365*, 368, 482, 531—547 , 547, 548, 549, 550, 554, 556
54 & 55 Vict. c. 39 (Stamp Act, 1891)	543
c. 40 (Brine Pumping (Compensation for Subsidence) Act, 1891)	387, 565
c. 54 (Ranges Act, 1891)	504
c. 65 (Lunacy Act, 1891)	50
c. 67 (Statute Law Revision Act, 1891)	389, 391, 414, 433, 441, 460
c. 76 (Public Health (London) Act, 1891)	39, 346, 349, 350, 596
55 & 56 Vict. c. 19 (Statute Law Revision Act, 1892)	183, 406—414, 420, 431, 432, 435, 436, 437, 457
c. 27 (Parliamentary Deposits and Bonds Act, 1892) ...	384*, 385*, 613—614
c. 31 (Small Holdings Act, 1892)	370
c. 43 (Military Lands Act, 1892)	380
c. 59 (Telegraph Act, 1892)	605
56 & 57 Vict. c. 54 (Statute Law Revision (No. 2) Act, 1893)	438
c. 68 (Isolation Hospitals Act, 1893)	380
c. 73 (Local Government Act, 1894)	141, 345, 515—518
57 & 58 Vict. c. 17 (Supreme Court of Judicature (Procedure) Act, 1894)	220
c. 46 (Copyhold Act, 1894)	289
c. 56 (Statute Law Revision Act, 1894)	394, 395
c. 57 (Diseases of Animals Act, 1894)	380
c. 60 (Merchant Shipping Act, 1894)	380
c. ccix. (Manchester Corporation Act, 1894)	316
58 Vict. c. 11 (Lands Clauses (Taxation of Costs) Act, 1895) ...	3, 175, 187, 202*, 203*, 218*, 386, 402, 438, 440
58 & 59 Vict. c. 16 (Finance Act, 1895)	244
c. 35 (Naval Works Act, 1895)	380
59 & 60 Vict. c. 48 (Light Railways Act, 1896)	316, 353, 385*, 386*, 614—7 , 618, 619

Text, pp. 1—387. Appendix of Statutes, pp. 389—615.

Folios with an asterisk [*] denote that the Act or section in question is specially dealt with.

Folios in block type [**654**] denote the pages in the Appendix where the statute in question is printed.

TABLE OF STATUTES.

lxxix

	PAGE
60 & 61 Vict. c. 43 (Military Manœuvres Act, 1897)	380
c. cxxxiii. (City of London Sewers Act, 1897)	520
c. ccxlii. (London County Council (Improvements) Act, 1897)	316, 353
61 & 62 Vict. c. 22 (Statute Law Revision Act, 1898)	439, 469
62 & 63 Vict. c. 14 (London Government Act, 1899).....	257, 265, 302, 346, 348
c. 19 (Electric Lighting (Clauses) Act, 1899)	387
c. 30 (Commons Act, 1899)	377, 589, 591, 600
c. celxvi. (London County Council (Improvements) Act, 1899)	316
63 & 64 Vict. c. 56 (Military Lands Act, 1900)	380
c. 59 (Housing of the Working Classes Act, 1900)	354
1 Edw. VII. c. celxxi. (London County Council (Tramways and Im- provements) Act, 1901)	75
2 Edw. VII. c. 42 (Education Act, 1902)	608
3 Edw. VII. c. 24 (Education (London) Act, 1903)	608
c. 30 (Railways (Electrical Power) Act, 1903)	383
c. 39 (Housing of the Working Classes Act, 1903)	354, 355
6 Edw. VII. c. 25 (Open Spaces Act, 1906)	381
7 Edw. VII. c. 9 (Territorial and Reserve Forces Act, 1907)	380
c. 15 (Salmon and Fresh Water Fisheries Act, 1907)	377
c. 53 (Public Health Acts Amendment Act, 1907)	338, 339, 344*, 345*, 380, 518—520
c. cxxxvi. (National Trust Act, 1907)	596
8 Edw. VII. c. 25 (Naval Lands (Volunteers) Act, 1908)	380
c. 28 (Agricultural Holdings Act, 1908)	373, 576, 577, 580, 592, 598
c. 33 (Telegraph (Construction) Act, 1908)	379, 604 , 605
c. 36 (Small Holdings and Allotments Act, 1908)	330, 370*—5*, 482, 567—581 , 591, 593, 599
c. 47 (Lunacy Act, 1908)	49, 50
c. 48 (Post Office Act, 1908)	379, 606—7
c. 69 (Companies (Consolidation) Act, 1908)	54, 230
9 Edw. VII. c. 44 (Housing, Town Planning, &c. Act, 1909)	316, 354, 355, 357, 358, 360, 361, 362, 364, 365, 366*, 367*, 368*, 369*, 533, 534, 535, 537, 539, 543, 547—559 , 560, 561, 566
c. 47 (Development and Road Improvement Funds Act, 1909)	316, 375*—7*, 385, 581—587 , 619
10 Edw. VII. & 1 Geo. V. c. 8 (Finance (1909-10) Act, 1910)	322
c. 34 (Small Holdings Act, 1910)	370, 375*
1 & 2 Geo. V. c. 6 (Perjury Act, 1911)	193, 433, 475
2 & 3 Geo. V. c. 19 (Light Railways Act, 1912)	385*, 386*, 615, 618
3 & 4 Geo. V. c. 28 (Mental Deficiency Act, 1913)	380
4 & 5 Geo. V. c. 7 (Agricultural Holdings Act, 1914)	598
5 Geo. V. c. 4 (Land Drainage Act, 1914)	377
c. 8 (Defence of the Realm Consolidation Act, 1914)	336

Text, pp. 1—387. Appendix of Statutes, pp. 389—615.

Folios with an asterisk [*] denote that the Act or section in question is specially dealt with.

Folios in block type [**654**] denote the pages in the Appendix where the statute in question is printed.

	PAGE
5 Geo. V. c. 22 (Universities and Colleges (Emergency Powers) Act, 1915)	255
5 & 6 Geo. V. c. 48 (Fishery Harbours Act, 1915)	377
6 & 7 Geo. V. c. 38 (Small Holding Colonies Act, 1916)	370, 375*, 593, 597—9
c. 40 (Telegraph (Construction) Act, 1916)	378, 604—5
c. 63 (Defence of the Realm (Acquisition of Land) Act, 1916)	330, 336, 483
8 & 9 Geo. V. c. 26 (Small Holding Colonies (Amendment) Act, 1918)	375, 593, 598
c. 39 (Education Act, 1918)	608
9 & 10 Geo. V. c. 21 (Ministry of Health Act, 1919)	59
c. 35 (Housing, Town Planning, &c. Act, 1919)	354, 355, 356, 358, 359, 360, 364, 365, 366*, 367*, 368*, 532, 534, 536, 539, 540, 541, 542, 544, 545, 546, 550, 551, 552, 553, 557, 558, 559—567 , 597
c. 57 (Acquisition of Land (Assessment of Compensation) Act, 1919)	2, 5, 75, 111, 141, 317*, 318, 319*—333*, 336, 337, 338, 339, 340, 344, 350, 352, 353, 354*, 355*, 361, 362, 363, 365, 367, 370*, 371, 372, 373, 374, 376, 378, 379, 380, 382, 478—488 (Rules 484—8), 539, 540, 557, 559, 611
c. 58 (Forestry Act, 1919)	377, 582, 587—590
c. 59 (Land Settlement (Facilities) Act, 1919)	370, 371, 372*—5*, 568, 569, 570, 574, 575, 576, 580, 591—7 , 597
c. 99 (Housing (Additional Powers) Act, 1919)	369
c. 100 (Electricity (Supply) Act, 1919)	387, 609
10 & 11 Geo. V. c. 17 (Increase of Rent and Mortgage Interest (Restrictions) Act, 1920)	123
c. 55 (Emergency Powers Act, 1920)	336*, 337*, 505—6
c. 56 (Places of Worship Enfranchisement Act, 1920)	lxxxi
c. 79 (Defence of the Realm (Acquisition of Land) Act, 1920)	336
11 & 12 Geo. V. c. 19 (Housing Act, 1921)	354, 369
c. 51 (Education Act, 1921)	380*, 608—612
c. 55 (Railways Act, 1921)	385, 616, 619
Defence Acts, 1842 to 1875	335, 336
Inclosure Acts, 1845 to 1899	585, 589, 596
Charitable Trusts Acts, 1853 to 1894	380, 609
University and College Estates Acts, 1858 to 1898	255, 258, 259
Telegraph Acts, 1863 to 1916	378*, 387, 604, 605
Settled Land Acts, 1882 to 1890	259, 260, 264, 573, 574, 597, 599
Military Lands Acts, 1891 to 1903	336

Text, pp. 1—387. Appendix of Statutes, pp. 389—615.

Folios with an asterisk [*] denote that the Act or section in question is specially dealt with.

Folios in block type [**654**] denote the pages in the Appendix where the statute in question is printed.

ADDENDA.

Page 264, note (g), *add*—As to service on Welsh Commissioners and Queen Anne's Bounty, see *Ex parte Great Western Rail. Co.*, (1922) W. N. 148.

Page 364, note (f), *add*—Cf. *Conron v. London C. C.* (1922), 38 Times L. R. 380.

The Places of Worship Enfranchisement Act, 1920, which gives trustees holding a leasehold interest in the site of a place of worship powers, under certain conditions, to acquire the freehold of the site, incorporates the Lands Clauses Act, 1845, and the minerals sections (sects. 77—85) of the Railway Clauses Act, 1845, with certain modifications. As arbitrations may arise under this Act it has been thought advisable to print it here.

PLACES OF WORSHIP (ENFRANCHISEMENT) ACT, 1920.

(10 & 11 GEO. V. c. 56.)

Right of Trustees holding Leasehold Interest in Place of Worship to acquire Freehold.

1.—(1) Where premises held under a lease to which this Act applies are held upon trust to be used for the purposes of a place of worship, whether in conjunction with other purposes or not, and the premises are being used in accordance with the terms of the trust, the trustees, notwithstanding any agreement to the contrary (not being an agreement against the enlargement of the leasehold interest into a freehold contained in a lease granted or made before the passing of this Act), shall have the right as incident to their leasehold interest to enlarge that interest into a fee simple, and for that purpose to acquire the freehold and all intermediate reversions:

Provided that—

- (a) if the premises exceed two acres in extent, the trustees shall not be entitled to exercise the right in respect of more than two acres thereof; and
- (b) this Act shall not apply where the premises are used or are proposed to be used for the purposes of a place of worship in contravention of any covenant contained in the lease under which the premises are held or in any lease superior thereto; and

- (c) this Act shall not apply where the premises form part of land which has been acquired by or is vested in any municipal, local or rating authority or in the owners thereof for the purposes of a railway, dock, canal or navigation under any Act of Parliament Provisional Order or Order having the force of an Act of Parliament and the freehold reversion in the premises is held or retained by such owners for those purposes.
- (2) The leases to which this Act applies are leases (including underleases and agreements for leases or underleases), whether granted or made before or after the passing of this Act, for lives or a life or for a term of years where the term as originally created was a term of not less than twenty-one years, whether determinable on a life or lives or not.

Procedure for acquisition of Reversionary Interests.

2. For the purpose of acquiring such reversionary interests as aforesaid, the Lands Clauses Acts shall apply as if the trustees had been authorised to acquire the premises by a special Act incorporating the Lands Clauses Acts and sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 20), subject, however, to the modifications set out in the Schedule to this Act, and to the following modifications:—

- (a) All questions of disputed compensation shall be settled by a single arbitrator, who shall be appointed, and whose remuneration shall be fixed, in default of agreement, by the judge of the county court, and the arbitrator shall be deemed to be an arbitrator within the meaning of the Lands Clauses Acts, and the provisions of those Acts with respect to arbitration shall, subject to the provisions of this Act, apply accordingly:
- (b) The consideration payable in respect of any intermediate reversion may, at the option of the person entitled to that reversion, be an annual rentcharge for a term corresponding to the unexpired residue of the term of the reversion:
- (c) In determining the amount of any compensation the value of any buildings erected, or improvements made by the trustees, shall be excluded:
- (d) No allowance shall be made on account of the acquisition being compulsory:
- (e) In determining the amount of compensation in any case where the rent reserved under the lease is less than the full annual value of the land, the compensation, so far as it is payable in respect of the interest of the lessor expectant on the expiration of the term of the lease, shall not be ascertained on the basis of the rent so reserved, but, subject always to the foregoing provisions of this section, on the estimated full value of the land at the expiration of the term of the lease.

* * * * *

Power to require Trustees to Sell in Certain Cases.

4. If the person who was entitled to the freehold reversion in the lands at the time when the interest of the trustees in the lands was enlarged into a fee simple, or the successor in title of that person, proves to the satisfaction of the Charity Commissioners that any premises the estate in fee simple in which has been acquired by the trustees under this Act, or any part thereof, are let or are habitually used for any purpose or purposes other than those specified in the trusts upon which the estate in fee simple is held the Commissioners shall, unless it appears to them that such use was due to inadvertence and will be discontinued, by order determine such letting or user, and for this purpose may declare void any contract for, and may prohibit by injunction the continuance of, any such letting or user, or may order that the premises or that part thereof shall be sold, and any order so made shall be enforceable by the same means and be subject to the same provisions as are applicable under the Charitable Trusts Acts, 1853 to 1894, to any orders made thereunder.

Definitions.

5. In this Act, unless the context otherwise requires,—

The expression “place of worship” means any church, chapel, or other building used for public religious worship, and includes a burial ground, Sunday or Sabbath school, caretaker’s house or minister’s house attached to or used in connexion with and held upon the same trusts as a place of worship:

The expression “freehold reversion” means the estate of fee simple in the premises subject to the lease held by the trustees and any lease superior thereto; and, where the premises subject to the lease consist of land of copyhold or customary tenure, includes the interest of the tenant by copy of court roll or the customary tenant subject to the lease held by the trustees and to any lease superior thereto as well as the interest of the lord of the manor:

The expression “intermediate reversion” means any leasehold interest in the land (whether under a lease or underlease or under an agreement for a lease or underlease) superior to the lease held by the trustees:

The expression “the county court” means the county court for the district in which the place of worship is situate:

The expression “trustees” means the persons in whom the leasehold premises are for the time being vested for the purposes of a place of worship under any trust whether express or implied and includes their predecessors in title.

Short Title and Extent.

6.—(1) This Act may be cited as the Places of Worship (Enfranchisement) Act, 1920.

(2) This Act shall not extend to Scotland or Ireland.

SCHEDULE.

MODIFICATIONS OF THE LANDS CLAUSES ACTS AND SECTIONS 77 TO 85
OF THE RAILWAYS CLAUSES CONSOLIDATION ACT, 1845.

(1) The use of the premises as a place of worship, whether in conjunction with other purposes or not, shall be deemed to be the undertaking or the railway and the trustees shall be deemed to be the promoters of the undertaking or the railway company.

(2) Section one hundred and twenty-three of the Lands Clauses Consolidation Act, 1845 (8 & 9 Vict. c. 18), limiting the time for compulsory purchase, shall not apply.

(3) If the trustees propose to sell the premises or any part thereof, sections one hundred and twenty-eight to one hundred and thirty-two of the Lands Clauses Consolidation Act, 1845, shall apply as if the premises or part thereof were superfluous lands within the meaning of those sections, and as if section one hundred and twenty-eight of that Act read as follows:—

“Before the promoters of the undertaking dispose of any such superfluous lands they shall . . . first offer to sell the same to the person who was entitled to the freehold reversion in the lands at the time when the interest of the trustees in the lands was enlarged into a fee simple or the successor in title (if any, of that person; and if that person or his successor in title, as the case may be, refuse to purchase the same, or cannot after diligent inquiry be found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands; and where more than one such person shall be entitled to such right of pre-emption such offer shall be made to such persons in succession, one after another, in such order as the promoters of the undertaking shall think fit.”

(4) The arbitrator shall, so far as practicable, in assessing compensation, act on his own knowledge and experience, but, subject as aforesaid, at any arbitration held under this Act the arbitrator shall hear, by themselves or their agents, the parties, and shall hear witnesses, but shall not, except in such cases as the arbitrator may otherwise direct, hear counsel or more than one expert witness on either side.

(5) The Lord Chancellor may make rules fixing a scale of costs to be applicable on an arbitration under this Act, and an arbitrator under this Act may, notwithstanding anything in the Lands Clauses Acts, determine the amount of costs, and shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been caused or incurred unnecessarily, and, if he thinks the circumstances such as to justify him in so doing, to order that each of the parties shall bear their own costs.

(6) There may be contained in the award of the arbitrator a finding that the claimant, after having been requested in writing by the trustees so to do, has failed to deliver to the trustees a statement in writing of the amount claimed, giving sufficient particulars and in sufficient time to enable the trustees to make a proper offer, and, where such a finding is contained in the award, the provisions of the Lands Clauses Acts as to costs of arbitrations shall apply as if the trustees had offered the same sum or a greater sum than that found to be due by the award:

Provided that this provision shall not apply unless the written request for particulars contained a notice of the effect of this provision.

(7) Land includes easements in or relating to land.

A TREATISE ON THE PRINCIPLES OF THE LAW OF COMPENSATION.

INTRODUCTION.

THE sovereign power of every state has authority to appropriate for purposes of public utility lands situate within the limits of its jurisdiction (*a*), and with the advance of civilisation it has been found necessary to delegate a similar power to bodies or corporations, whether trading for profit or not, so as to enable them to establish and conduct enterprises of public utility. But it is not deemed politic that this authority or power should be exercised so as to interfere with security in the enjoyment of private property, or that private property should be confiscated for public purposes without payment to the owner of its fair value. "It is a well-established principle that, unless no other interpretation is possible, justice requires that statutes should not be construed to enable the land of a particular individual to be confiscated without payment" (*b*).

In England, the law which provides for the protection of private

(*a*) This power is termed in the United States "Eminent Domain." As to the extent of and limitations on the Royal Prerogative, see *post*, p. 334.

(*b*) *Att.-Gen. v. De Keyser's Royal Hotel*, [1920] A. C. 508, at p. 576, *per Lord Parmoor*; cf. *Barrington's case* (1610), 8 Rep. 138, a; *River Weir Commissioners v. Adamson* (1877), 2 App. Cas. 743; *Western Counties Rail. Co. v. Windsor and Annapolis Rail. Co.* (1882), 7 App. Cas. 178; *Commissioner of Public Works (Cape Colony) v. Logan*, [1903] A. C. 355; *Commonwealth of Australia v. Hazeldell, Ltd.*, [1921] 2 A. C. 373.

interests, where it is required to appropriate lands for public purposes, has acquired the name of the "Law of Compensation."

The Lands Clauses Consolidation Acts form the only complete code (*c*) dealing with the law of compensation, but, especially of recent years, so many variations and modifications of this code have been enacted, that it has been found necessary to divide this treatise into two Books; the first dealing with the code contained in the Lands Clauses Acts, the second dealing with the variations and modifications above mentioned (*d*). It is, however, essential to bear in mind that none of these variations or modifications constitutes in itself a complete code, and that in practically all cases some part of the machinery of the Lands Clauses Acts is still applicable. The most important of the modifications is the Acquisition of Land (Assessment of Compensation) Act, 1919, which applies in all cases of the compulsory acquisition of land by any government department or any local or public authority. The general considerations which led to its enactment, and the terms of the statute itself, are dealt with in the second Book (*e*).

(*c*) See the Reports of the Ministry of Reconstruction Committee dealing with the law and practice relating to the acquisition and valuation of land for public purposes (1918-9), in which a new code is suggested.

(*d*) The Railways and Waterworks Clauses Acts, owing to their close connection with the Lands Clauses Acts, have been dealt with in the first Book.

(*e*) *Post*, p. 315.

BOOK I.



CHAPTER I.

INCORPORATION OF THE LANDS CLAUSES ACTS.

THE code of the Lands Clauses Acts is contained in the Lands Clauses Consolidation Act, 1845 (*a*), the Lands Clauses Consolidation Act Amendment Act, 1860, the Lands Clauses Consolidation Act, 1869, the Lands Clauses (Umpire) Act, 1883, and the Lands Clauses (Taxation of Costs) Act, 1895. The first three of these Acts are to be construed as one Act (*b*), and may be cited together in all instruments and documents (*c*) as the Lands Clauses Consolidation Acts, 1845, 1860, 1869 (*d*). In Acts passed after 1889 the expression "Lands Clauses Acts" includes, as respects England and Wales, the Acts of 1845, 1860, 1869 and 1883, and any Act for the time being in force amending them (*e*). Hence the Lands Clauses (Taxation of Costs) Act, 1895, is included in the expression "Lands Clauses Acts," and that compendious expression is adopted throughout this work.

The preamble of the Lands Clauses Act, 1845, explains the reasons which led to its enactment:—"the expediency of comprising in one general Act sundry provisions usually introduced into Acts of Parliament relative to the acquisition of lands required for undertakings or works of a public nature, and to the compensation to be made for the same; and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the

Lands Clauses Acts.

Why L. Cl. Act, 1845, was enacted.

(*a*) For the history of this Act, see Clifford's History of Private Bill Legislation, vol. 1, p. 103; vol. 2, p. 524.

(*b*) L. Cl. Acts, 1860, s. 8; 1869, s. 4.

(*c*) Interpretation Act, 1889, s. 35 (1).

(*d*) L. Cl. Act, 1869, s. 4.

(*e*) Interpretation Act, 1889, s. 23 (*a*). The meaning of the phrase, as applicable to Scotland or Ireland, is stated in s. 23 (*b*), (*c*).

several Acts relating to such undertakings, as for insuring greater uniformity in the provisions themselves."

Incorporation
of L. Cl. Acts
into special
Acts.
S. 1.

There is no necessity to make special provision for the incorporation of the Lands Clauses Acts into Acts authorizing the acquisition of lands required for undertakings or works of a public or commercial character. By section 1 of the Lands Clauses Act, 1845, it is enacted, that "This Act shall apply to every undertaking authorized by any Act which shall hereafter be passed, and which shall authorize the purchase or taking of lands for such undertaking, and this Act shall be incorporated with such Act; and all the clauses and provisions of this Act, save so far as they shall be expressly varied or excepted by any such Act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other Act which shall be incorporated with such Act, form part of such Act, and be construed together therewith as forming one Act" (*f*). In other words, the Lands Clauses Acts form a code of law applicable to all undertakings of the character indicated, except so far as they are specifically modified by subsequent Acts (*g*) or by the Acts authorizing the particular undertaking. It will be found, however, that, in nearly all local and personal or private Acts in which powers are given for the compulsory acquisition of lands, there is a section which incorporates the Lands Clauses Acts, and that they are also incorporated by a considerable number of public Acts which give to local authorities the power of taking lands compulsorily for the purposes of drainage and other public works, such as the Housing of the Working Classes (*g*).

"Every
undertaking"
includes
undertakings
of a public
nature.

The words "every undertaking" include every case in which lands are required for undertakings of a public or quasi-public nature; but an Act in the nature of a Private Estate Act, and passed for the purpose of giving a lease priority over certain charges and incumbrances, has been held not to incorporate the Lands Clauses Act, 1845 (*h*).

Incorporation
of L. Cl. Acts

The Lands Clauses Acts are incorporated not only into Acts of

(*f*) See *In re Wood's Estate* (1886), 31 Ch. D. 607, at pp. 617, 618; 55 L. J. Ch. 488; *Re St. Sepulchre's, Westminster, Estate* (1864), 33 L. J. Ch. 372. But see *post*, p. 319.

(*g*) See Book II.

(*h*) *Wale v. Westminster Palace Hotel Co.* (1860), 8 C. B. N. S. 276; cf. *Re Sion College* (1888), 57 L. T. 743.

Parliament subsequently passed for authorizing undertakings of a public nature, but also into similar Acts originally passed before the year 1845, but varied since that date by the provisions of a fresh Act. In *Lancashire and Yorkshire Rail. Co. v. Evans* (i), Romilly, M. R., said : "Whenever a company is compelled to come for a fresh Act of Parliament to vary the provisions of an old Act, the legislature imposes it on the company as a condition that they shall import into the old Act the Lands Clauses Act, and that all its principles shall apply to such Act."

The provisions of the Lands Clauses Acts do not apply where they are expressly varied or excepted by the special Act or a subsequent general Act (k), and in any case are incorporated only so far as they are applicable to the undertaking authorized by the special Act. It is not essential that any clauses or series of clauses should in express language be varied or excepted, where the special Act contains provisions which cannot be construed so as to be consistent with their application (l). Such inconsistency must be clearly established.

L. Cl. Acts only incorporated if applicable and unless expressly varied or excepted.

In *R. v. Lord Mayor of London* (m), Blackburn, J., in delivering the judgment of the court, says, "The Lands Clauses Consolidation Act was passed to make a general code regulating the manner in which lands might be taken under the authority of Parliament, and compensation made for injury occasioned by what was thus legalized by the legislature; and we think that, in construing any Act of Parliament passed since that Act, we ought to suppose that the legislature intended to follow this code, except where, by the express language of the special Act, or by necessary intendment from its provisions, it appears that the intention of the legislature was in some particulars to depart from that general code and substitute something else."

In *Metropolitan District Rail. Co. v. Sharpe* (n), it was decided that provisions introduced into the special Act for the appointment of an arbitrator in a manner inconsistent with the provisions of the

(i) (1851), 15 Beav. 322; *S. C.*, at law, 22 L. J. Q. B. 254; cf. *Ex parte Eton College* (1851), 20 L. J. Ch. 1.

(k) Cf., for instance, Acquisition of Land (Assessment of Compensation) Act, 1919 (9 & 10 Geo. 5, c. 57), s. 7, *post*, pp. 329, 330.

(l) Cf. *City & South London Rail. Co. v. London County Council*, [1891] 2 Q. B. 513; 60 L. J. M. C. 99, 149.

(m) (1867), L. R. 2 Q. B. 292.

(n) (1880), 5 App. Cas. 425; 50 L. J. Q. B. 14.

Lands Clauses Act, 1845, but containing no mention of costs, did not vary the provisions as to the costs of an arbitration contained in the Lands Clauses Act, 1845. Lord Selborne, referring to the clause in question of the special Act, says (*o*), "That clause is to be read, so far as it can be read, with the general provisions contained in the Lands Clauses Consolidation Act. . . . In construing Acts of Parliament of this kind, and adjusting the general provisions in the general Act to the particular provisions of the special Act, considerations of reason and justice, and the universal analogy of such provisions in similar Acts of Parliament, are proper to be borne in mind, and ought to have much weight and force" (*p*).

The Lands Clauses Act, 1845, is not applicable where a compliance with its provisions would divert money to purposes other than those specified in the special Act (*q*).

Provisions for express exclusion or incorporation of portions of L. Cl. Act.

Section 5 of the Lands Clauses Act, 1845, contains provisions for the incorporation of portions of the Act (with or without express variations or exceptions), by reference to the various introductory headings under which the series (or *fasciculi*) of clauses dealing with special parts of the subject are arranged, and the same provisions are applicable where it is desired to except any portion of the Act in express language.

When any portion of the Lands Clauses Acts is expressed to be incorporated or excepted in the words of any introductory heading descriptive of the series of clauses which follow, the whole of that portion is incorporated or excluded which is contained in the series of clauses between such heading and the next introductory heading (*r*). Clauses which refer to the same subject-matter, but which are not in the series expressly excluded by reference to the introductory heading, are not excepted from the special Act so far as they may be applicable (*s*).

Where words used are not those of an

Where a portion of the Lands Clauses Acts is expressed to be incorporated or excepted in language other than that contained in

(*o*) At p. 431.

(*p*) Cf. *Sparrow v. Oxford, &c. Rail. Co.* (1852), 21 L. J. Ch. 731; *Great Western Rail. Co. v. Swindon, &c. Rail. Co.* (1884), 9 App. Cas. 787; 53 L. J. Ch. 1075; affirming *S. C.*, 22 Ch. D. 677.

(*q*) *In re Cherry's Settled Estates* (1862), 31 L. J. Ch. 351; followed *In re Mills' Estate* (1886), 34 Ch. D. 24; 56 L. J. Ch. 60.

(*r*) *Ferrar v. Commissioners of Sewers* (1869), L. R. 4 Ex. 227; 38 L. J. Ex. 102; *Dungey v. Mayor, &c. of London* (1869), 38 L. J. O. P. 298.

(*s*) *R. v. Lord Mayor of London* (1867), L. R. 2 Q. B. 292.

the introductory headings, it is a question of construction how far any clause or series of clauses are comprised in the words of incorporation or exclusion (*t*). introductory heading.

In *Broadbent v. Imperial Gas Co.* (*u*), it was held that, where a special Act incorporated the Lands Clauses Act, 1845, except so much as related exclusively to the purchase and taking of lands by compulsion, section 68 was not excepted, although all the sections 16—68 inclusive are included under the same introductory heading,—“and with respect to the purchase and taking of lands otherwise than by agreement.” In that case the special Act provided that no nuisance or injury should be caused to adjoining land, and it was held that section 68, although not excluded, did not take away the right of action for nuisance (*x*).

(*t*) *Eastern Counties, &c. Rail. Co. v. Marriage* (1860), 9 H. L. C. 32, at p. 41; 31 L. J. Ex. 73; *Hammersmith Rail. Co. v. Brand* (1869), L. R. 4 H. L. 171, 203, 208; 38 L. J. Q. B. 265; cf. *Lang v. Kerr, Anderson & Co.* (1878), 3 App. Cas. 529.

(*u*) (1857), (C. A.) 26 L. J. Ch. 276; (H. L.) 7 H. L. C. 600, 612; 29 L. J. Ch. 377.

(*x*) *Broadbent v. Imperial Gas, &c. Co.* (1859), 7 H. L. C. 600; 29 L. J. Ch. 377; cf. *Hammersmith Rail. Co. v. Brand* (1869), L. R. 4 H. L. 171, at p. 221; 38 L. J. Q. B. 265.

CHAPTER II.

DEFINITION OF LANDS.

Lands.
Definition in
s. 3, L. Cl.
Act, 1845.

LANDS are the subject-matter of the law of compensation. Mines are included under "lands" and if required may be purchased in the first instance either by agreement or compulsorily (*a*).

Section 3 of the Lands Clauses Act, 1845, defines lands as "messuages, lands, tenements, and hereditaments of any tenure." This definition is subject, however, to the general words with which the section commences. "The following words and expressions, both in this and the special Act, shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction."

"Messuages."
"Tenements."

The term "messuage" is substantially equivalent to house (*b*).

In Co. Litt. 6 a, n. (2), it is said that "Tenement is a large word used to pass not only lands and other inheritances which are holden, but also offices, rents, commons, profits à *prendre* out of lands and the like, wherein a man hath any possible tenement, and whereof he is seised '*ut de libero tenemento*.' But hereditament is the largest of all in that kind, for whatsoever may be inherited is an hereditament, be it corporeal or incorporeal, real or personal, or mixt." And Blackstone (Comm. vol. 2, p. 16) says that "Incorporeal hereditaments are principally of ten sorts—advowsons, tithes, commons, ways, offices, dignities, franchises (*c*), corrodies or pensions, annuities, and rents" (*d*).

"Of any tenure."

The words "of any tenure" in section 3 do not limit the application of the definition of hereditaments to such incorporeal

(*a*) *Holliday v. Mayor, &c. of Wakefield*, [1891] A. C. 81; 60 L. J. Q. B. 361; *Smith v. Great Western Rail. Co.* (1887), 3 App. Cas. 165; 47 L. J. Ch. 97; *Errington v. Metropolitan District Rail. Co.* (1882), 19 Ch. D. 559; 51 L. J. Ch. 305. *Vide post*, p. 127.

(*b*) *Vide post*, pp. 36—38.

(*c*) *R. v. Cambrian Rail. Co.* (1871), L. R. 6 Q. B. 422; 40 L. J. Q. B. 169; cf. *Great Western Rail. Co. v. Swindon, &c. Rail. Co.* (1884), 9 App. Cas. 787, at p. 802; 53 L. J. Ch. 1075; *Hopkins v. Great Northern Rail. Co.* (1877), 2 Q. B. D. 224, 237; 46 L. J. Q. B. 265.

(*d*) *In re Brewer* (1876), 1 Ch. D. 409.

hereditaments as are capable of tenure, but are to be construed as meaning "of whatever tenure, if any"; and so far as the definition clause is concerned, lands, as there defined, include easements (*e*). It must be remembered, however, that although in the definition clause lands include easements, yet, in dealing with the subsequent sections of the Lands Clauses Act, 1845, the context must in all cases be specially considered. There is no power under the Lands Clauses Acts to compel the creation of an easement over lands (*f*). In *Great Western Rail. Co. v. Swindon, &c. Rail. Co.* (*g*) it was decided that section 16 of the Lands Clauses Act, 1845, did not apply to the taking of an easement: but in this case the power to take the easement was given under the provisions of the special Act.

In a case which was decided before the Tithe Act, 1836, it Tithes. was held that the rector or vicar is not interested in the land out of which the tithe arises, that his interest only accrues when the tithe has arisen, and that he is not entitled to compensation, since it was competent for the owner from whom the land had been purchased to use the land in such a way as not to produce tithe (*h*).

The charge created under the Tithe Act, 1836, "in the nature of a rent-charge issuing out of the lands charged therewith" is not a rent-charge on the inheritance (*i*). It appears to follow that the owner of tithe has no such rent-charge as would entitle him to claim compensation under sections 115—118 of the Lands Clauses Act, 1845. But when a tithe rent-charge has been specially constituted so as to be an incorporeal hereditament (*k*), such tithe rent-charge would be properly subject-matter for compensation.

(*e*) *Great Western Rail. Co. v. Swindon, &c. Rail. Co.* (1884), 9 App. Cas. 787, 802; 53 L. J. Ch. 1075 (overruling on this point *Pinchin v. London & Blackwall Rail. Co.* (1855), 24 L. J. Ch. 417); *In re Metropolitan District Rail. Co. and Cosh* (1880), 13 Ch. D. 607; 49 L. J. Ch. 277; *R. v. Cambrian Rail. Co.* (1871), L. R. 6 Q. B. 422, 431; 40 L. J. Q. B. 169; *Hopkins v. Great Northern Rail. Co.* (1877), 2 Q. B. D. 224, 227; 46 L. J. Q. B. 265; cf. *Mayor, &c. of Birkenhead v. L. & N. W. Rail. Co.* (1885), 15 Q. B. D. 572, at p. 578; 55 L. J. Q. B. 48; *Re Lancashire & Yorkshire Rail. Co. and Earl of Derby's Contract* (1909), 100 L. T. 44.

(*f*) *Hill v. Midland Rail. Co.* (1882), 21 Ch. D. 143; 51 L. J. Ch. 774; explained in *Great Western Rail. Co. v. Swindon, &c. Rail. Co.* (1884), 9 App. Cas. 787, 802; 53 L. J. Ch. 1075.

(*g*) (1884), 9 App. Cas. 787; 53 L. J. Ch. 1076.

(*h*) *R. v. Nene Outfall Commissioners* (1829), 9 B. & C. 875.

(*i*) *Bailey v. Badham* (1885), 30 Ch. D. 84; 54 L. J. Ch. 1067.

(*k*) *In re Esdaile, Esdaile v. Esdaile* (1886), 54 L. T. 637.

The Tithe Act, 1878 (*l*), and the subsequent Acts dealing with tithe redemption do not immediately affect questions of compensation, but depend on different principles. "Tithes" imposed by the statute and decree of 37 Hen. 8, c. 12, upon the inhabitants of the City of London are "annuities or periodical sums of money charged upon land" (*m*), and the owners of such tithes have been protected by special sections giving either indemnity or compensation (*n*).

Rights of shooting.

In *Bird v. Great Eastern Rail. Co.* (*o*) the plaintiff had the right of shooting over land taken by the railway company, but by an agreement not under seal, and the question raised was his right to compensation. Erle, C. J., says in his judgment, "The right which the plaintiff has is a mere licence by an instrument not under seal. The plaintiff's right lies only in agreement, and he has no land, or interest in any land, which has been taken by the defendants." Willes, J., discussed in his judgment (*p*) the larger question whether compensation can be awarded in respect of a right of shooting and fishing, assuming that such right had been effectually granted. It is submitted that an effectual claim for compensation could not be framed where the grant of a right of shooting contains no special covenants. The railway company would not be trespassers as against the grantee of the right of shooting, and so could not be compelled to purchase his interest in the lands taken before entering thereon; neither would the railway company injuriously affect such an interest, because the grantor could, so far as was consistent with his grant, deal as he wished with his property, and the grantee would have no right of action.

Other cases on "interests in land."

An agreement which "grants and lets the free and exclusive right to sell refreshments" in a theatre "together with the necessary use of the refreshment rooms and bars and cloak rooms and cellars" does not create an interest in land giving a title to compensation (*q*).

It has been held that a company empowered to "appropriate and use the subsoil and under-surface" of land took not merely an

(*l*) 41 & 42 Vict. c. 42, s. 1.

(*m*) *Esdaile v. Payne* (1888), 13 App. Cas. 613; 58 L. J. Ch. 299.

(*n*) See *Esdaile v. Metropolitan & District Rail. Cos.* (1881), 46 J. P. 103; *London & Blackwall Rail. Co. v. Letts* (1851), 3 H. L. C. 470; *In re Esdaile, Esdaile v. Esdaile* (1886), 54 L. T. 636.

(*o*) (1865), 34 L. J. C. P. 366.

(*p*) At p. 284.

(*q*) *Frank Warr & Co. v. London County Council*, [1904] 1 K. B. 713; cf. *Edwardes v. Barrington* (1902), 85 L. T. 650.

easement but an interest in land, and that before proceeding it was necessary to serve a notice to treat (*r*).

A right reserved to a lessee in a mining lease to sink a pit or pits through some part of the surface land under which minerals had been demised to him entitles the lessee to claim compensation, although the position of such pit or pits is subject to the reasonable approval of the lessor, his heirs or assigns (*s*).

The law of compensation, in reference to easements or similar rights over land, is definite and settled. The Lands Clauses Act, 1845, does not empower the promoters to compel an owner to grant an easement over his lands (*t*). The same is true of the Railways Clauses Act, 1845, the Waterworks Clauses Act, 1847, and the Gas Works Clauses Act, 1847. On the other hand, the Lands Clauses Act, 1845, under section 68, gives full compensation to the owner for interference with an existing easement, such interference being an injury to the dominant tenement (*u*).

Easements or rights over land.

A large number of public general Acts (*x*) and of private Acts include easements or similar rights under the definition of lands, or give special powers of purchasing or taking easements compulsorily. Where these Acts give specific powers, the promoters can compel owners to grant the necessary easements or similar rights over their lands (*y*). But when an existing easement is interfered with in the execution of works authorized under compulsory powers, the owner should in all cases claim compensation for injury done to the dominant tenement, and cannot call upon the promoters to purchase such easement before proceeding to interfere with it (*z*).

In some Acts easements included under "lands."

(*r*) *Farmer v. Waterloo and City Rail. Co.*, [1895] 1 Ch. 527; 64 L. J. Ch. 338; cf. *Metropolitan Rail. Co. v. Fowler*, [1893] A. C. 416; 62 L. J. Q. B. 553.

(*s*) *In re Masters and Great Western Rail. Co.*, [1901] 2 K. B. 84; 70 L. J. K. B. 516.

(*t*) *Pinchin v. London & Blackwall Rail. Co.* (1855), 24 L. J. Ch. 417; *Hill v. Midland Rail. Co.* (1882), 21 Ch. D. 143; 51 L. J. Ch. 774; cf. *Great Western Rail. Co. v. Swindon, &c. Rail. Co.* (1884), 9 App. Cas. 787; 53 L. J. Ch. 1075; *In re London School Board and Foster* (1903), 87 L. T. 700.

(*u*) *Thicknesse v. Lancaster Canal Co.* (1838), 4 M. & W. 472.

(*x*) See Book II.

(*y*) *Hill v. Midland Rail. Co.* (1882), 21 Ch. D. 143; 51 L. J. Ch. 774; *Farmer v. Waterloo & City Rail. Co.*, [1895] 1 Ch. 527; 64 L. J. Ch. 338. The easement must not be more extensive than the purposes demand: *Taff Vale Rail. Co. v. Cardiff Rail. Co.*, [1917] 1 Ch. 299.

(*z*) *Clark v. School Board for London* (1874), L. R. 9 Ch. 120; 43 L. J. Ch. 421; *Badham v. Marris* (1882), 52 L. J. Ch. 237; *Swainston v. Finn and Metropolitan Board of Works* (1883), 52 L. J. Ch. 235.

**Interference
with an
easement.**

It was decided in *Thicknesse v. Lancaster Canal Co.* (a), and has been consistently adhered to, that the clauses of the Lands Clauses Act, 1845, and similar Acts, which refer to the purchase and taking of lands by compulsion, are not applicable to interference with an easement, and that the owner of such easement can only claim compensation under those clauses which provide a remedy where injury has already been sustained. This case turned on an Act passed before the Lands Clauses Act, 1845, but the definition of lands included "lands, tenements, and hereditaments." Parke, B., says, "I think the sections in the Act of Parliament which enable the company to treat with persons interested in land do not apply to persons who have a mere easement or right of passage over the land. All the company want to purchase is the lands themselves, and they must treat with those who have an interest in them, either as tenants in fee, for life, or for years, in severalty or in common. The company are also bound to make compensation to any person interested in lands, or having a right of way or easement into or over lands, for any damage he may sustain in consequence of the works performed by the company under or by virtue of the powers of this Act of Parliament; and in this case, if the plaintiff has sustained any real injury by the division of his railroad, and if they do not put him in the same situation as he was before, by putting a bridge where the railway is, he will be entitled to receive full compensation from the company."

In *Clark v. School Board for London* (b), the School Board was, under the powers of the Elementary Education Act, 1870, building schools which would interfere with the plaintiff's ancient lights. This Act contains (section 19) a definition of "land" (c), including any right over land. The School Board gave no notice to treat for the plaintiff's easement of light, and took no steps for the purpose of purchasing or taking it. The plaintiff filed a bill for an injunction to restrain the School Board from proceeding without taking the necessary steps prescribed by the Act. Lord Selborne, giving the judgment of the Court of Appeal, said (d), "In my opinion

(a) (1838), 4 M. & W. 472.

(b) (1874), L. R. 9 Ch. 120; 43 L. J. Ch. 421.

(c) The definition in s. 3 of the Lands Clauses Act, 1845, includes similar rights. See *Great Western Rail. Co. v. Swindon, &c. Rail. Co.* (1884), 9 App. Cas. 787; 53 L. J. Ch. 1075.

(d) At p. 124.

the sound view is, that the application, according to the nature of the subject-matter, of the different compensation clauses of the Lands Clauses Consolidation Act [1845], is not meant to be altered by the definition in the special Act that in the word 'land' is included 'any right over land,' or by the express enactment that the compulsory powers are to extend to rights over land. The general Act contains a scheme of provisions working out the right to compensation, and that scheme of provisions varies according to the subject-matter. In some clauses it is provided that when land is to be taken, notice is to be given, and if that notice is given, then there is a right to enter upon the land, and no injunction can be granted; but if there is an attempt to enter without notice, and without taking the proper steps, then an injunction may be granted. The interference with ancient lights is not a thing which is capable of being 'entered upon.' The word 'entering' is inapplicable to it, and therefore such a section as the 85th is inapplicable to this case. But there are other cases mentioned in the Act in which compensation is to be made, such as the case in which no agreement has been arrived at, though an injurious act is proposed to be done upon lands not taken. These provisions in the Act seem to be applicable to a case of this kind; and the more so, because in many such cases, until the thing is done, it cannot be known how far the land will be injuriously affected, so as to be the subject of compensation. I am glad to find that in coming to this conclusion we are not without authority. The case of *Macey v. Metropolitan Board of Works* (*e*) seems in that respect to be on all fours with the present case. There the Thames Embankment Act, 1862 (*f*), by a definition clause similar to that which we have to construe here, says that the word 'lands' is to be construed to include easements and rights over land. In the execution of the works, the Metropolitan Board of Works proceeded to fill up the river in front of the plaintiff's wharf, and it was found that he would lose a very valuable right over the land in front of his wharf. He insisted that they should have given notice of their intention to acquire his easement by purchase. But it was held that he was wrong; that their right to enter and execute the works was not in abeyance till they had done that act; and that the nature of the right was such that the proper compensation clauses applicable to it were

(*e*) (1864), 33 L. J. Ch. 377.

(*f*) 25 & 26 Vict. c. 93.

those which related to persons whose lands were injuriously affected, and not those which related to persons whose lands were purchased under what we may call the purchase clauses. That is an authority which appears to be consistent with common sense, and from which I, for my part, do not differ" (f). These decisions are not affected by the case of *Great Western Rail. Co. v. Swindon, &c. Rail. Co.* (g), which does not overrule the decision of Lord Cranworth in *Pinchin v. London and Blackwall Rail. Co.* (h), so far as it relates to the purchase and taking of lands.

Waterworks
Cl. Act, 1847,
s. 6.

The Waterworks Clauses Act, 1847 (10 & 11 Vict. c. 17), s. 6 (i), places the taking of streams (k) under that Act on the same footing as the taking of lands under the Lands Clauses Act, 1845. There are four decisions under this Act which illustrate clearly the difference in the steps that should be followed where easements or similar rights over land are interfered with or extinguished, and where the lands themselves are actually taken.

In *Ferrand v. Corporation of Bradford* (l), and in *Stone v. Corporation of Yeovil* (m), it was held that where the whole of a stream is taken the right or interest in the water is a substantial right or interest capable of being transferred or taken, and that, in dealing with such right or interest, the undertakers are bound to make compensation at once for the whole value of such right or interest, and to take the necessary steps to purchase and take it by compulsion, if no agreement has been come to.

In *Bush v. Trowbridge Waterworks Co.* (n), water had been merely abstracted by a waterworks company so as to interfere with the easement of a riparian owner; and it was held that the riparian owner was not entitled to require the company to treat for the purchase of his easement in the stream, but only to claim compensation for injury sustained under the 68th clause of the Lands Clauses Act, 1845.

(f) Cf. *Duke of Bedford v. Dawson* (1875), L. R. 20 Eq. 353; 44 L. J. Ch. 549; *In re London, Tilbury and Southend Rail. Co. and Gower's Walk Schools* (1889), 24 Q. B. D. 40, 326; 59 L. J. Q. B. 162.

(g) (1884), 9 App. Cas. 787; 53 L. J. Ch. 1075.

(h) (1885), 24 L. J. Ch. 417.

(i) See also Gas and Water Works Facilities Act, 1870, ss. 4, 10; Public Health Act, 1875, s. 161.

(k) I.e., "springs, brooks, rivers, and other running waters," s. 3.

(l) (1856), 25 L. J. Ch. 389.

(m) (1876), 2 C. P. D. 99; 46 L. J. C. P. 137.

(n) (1875), L. R. 19 Eq. 291; 10 Ch. 459; 44 L. J. Ch. 235, 645.

In *Page v. Kettering Waterworks Co. (o)*, the claimants were owners of mills upon a river, and the waterworks company were permitted, by their special Act, to take a certain amount of water from two brooks, which fell into a tributary of the river. Fourteen-fifteenths of the water taken fell, after use, into the river above the claimants' mills. The claimants were not riparian owners on the brooks or tributary stream, and their right was confined to having the customary flow of water past their mills. It was therefore held that they could only claim for "injuriously affecting," and had no direct interest in respect whereof compulsory purchase could be insisted on.

There are no sections in the Lands Clauses Act, 1845, which empower the undertakers to compel an owner of lands to create or grant an easement in their favour, although such easement might be sufficient for carrying out the purposes of the undertaking (*p*).

No power to
compel grant
of an ease-
ment.

In *Pinchin v. London and Blackwall Rail. Co. (q)*, although it was not one of the grounds on which his judgment was based, Wood, V.-C., gives his opinion that section 16 of the Railways Clauses Act, 1845, read in connection with the Lands Clauses Act, 1845, would empower the promoters to give notice to treat for the creation of an easement in their favour. But on appeal in the same case (*r*), Lord Cranworth, L. C., expressed a contrary opinion. "The legislature did not mean, that if I have a field free from a right of way, I shall be bound upon any compensation to substitute for that a field subject to a right of way; if it is to be taken from me, it must be taken *in solido*." This decision of the Lord Chancellor must be limited to cases arising under section 18 of the Lands Clauses Act, 1845, and so far the case is consistent with the later case of *Great Western Rail. Co. v. Swindon, &c. Rail. Co. (s)*.

In *Falkner v. Somerset and Dorset Rail. Co. (t)*, the railway company claimed to be entitled to take simply an easement or

(*o*) (1892), 8 Times L. R. 228: cf. *Tatton v. Staffordshire Waterworks Co.* (1879), 44 J. P. 106.

(*p*) *Ramsden v. Manchester & Altrincham Rail. Co.* (1848), 1 Ex. 723; *Sparrow v. Oxford, &c. Rail. Co.* (1852), 21 L. J. Ch. 731.

(*q*) (1854), 1 K. & J. 34.

(*r*) (1855), 24 L. J. Ch. 417.

(*s*) (1884), 9 App. Cas. 787; 53 L. J. Ch. 1075.

(*t*) (1873), L. R. 16 Eq. 458; 42 L. J. Ch. 851.

right of tunnelling under the land. But in argument the point appears to have been given up by the railway company's counsel, and no reference is made to it in the judgment of the Lord Chancellor.

Creation or
grant of
easements.

If the promoters desire to compel the compulsory creation or grant of easements, a special provision should be inserted in the special Act. This was done in the Midland Company's Act, 1881 (44 & 45 Vict. c. cli.) (*u*), and a similar provision will be found in many special Acts where the compulsory creation of an easement is not likely to injure materially the interests of the owner affected.

(*u*) *Hill v. Midland Rail. Co.* (1882), 21 Ch. D. 143; 51 L. J. Ch. 774. This case turns on the terms of the special Act. See *Great Western Rail. Co. v. Swindon, &c. Rail. Co.* (1884), 9 App. Cas. 787, 802; 53 L. J. Ch. 1075; *Taff Vale Rail. Co. v. Cardiff Rail. Co.*, [1917] 1 Ch. 299.

CHAPTER III.

LANDS AUTHORIZED TO BE TAKEN.

PART I.—GENERAL.

THE limits within which the promoters of the undertaking are authorized to purchase and take lands are defined by the special Act or Acts or Order under which they derive their powers, and previous notices to landowners and representations made in deposited plans are only effective so far as they are incorporated into or referred to in such Act or Acts or Order (*a*). In section 6 of the Lands Clauses Act, 1845, it is made lawful for the promoters to agree with the owners "of any lands by the special Act authorized to be taken, and which shall be required for the purposes of such Act." Lands in this section would have the same meaning as in the interpretation section (section 3) and would include easements (*b*). It would be competent to create an easement by agreement with the owner. Section 18, which has reference to compulsory powers, begins, "When the promoters of the undertaking shall require to purchase or take any of the lands which by this or the special Act, or any Act incorporated therewith, they are authorized to purchase or take, &c." So far as this section is compulsory, the undertakers have not power to compel the creation of easements (*c*).

Limits defined
in special
Act.

S. 6, L. Cl.
Act, 1845.

S. 18, L. Cl.
Act, 1845.

(*a*) In *In re Corporation of Huddersfield and Jacomb* (1874), L. R. 10 Ch. 92; 44 L. J. Ch. 96, Lord Justice Mellish says: "It is now settled law that what was contained in the notice to the landowner as to the width which the conduit was to be, cannot affect the corporation, even if it got into the deposited plans, unless it was contained in the Act of Parliament." Cf. *North British Rail. Co. v. Tod* (1846), 12 Cl. & F. 722, which has reference to construction of works; and *Att.-Gen. v. Great Eastern Rail. Co.* (1873), L. R. 7 Ch. 475; 6 H. L. 367; 41 L. J. Ch. 505; *Mayor, &c. of Yarmouth v. Simmons* (1878), 10 Ch. D. 518; 47 L. J. Ch. 792; *R. v. Caledonian Rail. Co.* (1851), 16 Q. B. 19, at p. 30; *Taff Vale Rail. Co. v. Cardiff Rail. Co.*, [1917] 1 Ch. 299.

(*b*) Cf. *ante*, pp. 9, 15.

(*c*) *Pinchin v. London & Blackwall Rail. Co.* (1855), 24 L. J. Ch. 417; *Taff Vale Rail. Co. v. Cardiff Rail. Co.*, *supra*.

Ordinary
form of clause
in special
Act.

The clause, defining the limits within which the promoters of the undertaking can purchase and take lands, is of the following or some similar form: "Subject to the provisions in this Act and the incorporated Acts contained, the promoters of the undertaking may make and maintain the undertaking hereinafter described, upon the lands delineated upon the deposited plans, and described in the deposited book of reference (*d*), and may enter upon, take, and use such of those lands as shall be necessary for the purpose of the undertaking." This form of clause imposes a double limitation on the powers of promoters. No lands can be purchased or taken which are not delineated upon the deposited plans and described in the deposited books of reference; and of these lands only such portions can be purchased or taken as are necessary for the purposes of the undertaking. On the other hand, limits of deviation are not inserted for the purpose of restricting the area within which the compulsory powers for the purchase or taking of land may be exercised, but for defining the position of the centre line of the proposed new works. Although in some cases the lands delineated for conferring powers of compulsory purchase for the purposes of the undertaking may be identical with the lands comprised within the limits of deviation, yet the power to purchase and take lands compulsorily depends on whether such lands are delineated on the deposited plan and described on the deposited book of reference (*e*). The appropriation of subsoil has been held to be equivalent to the taking of land, rendering necessary a notice to treat (*f*), and making the company chargeable with land tax (*g*).

Limit of area. In *Dowling v. Pontypool, &c. Rail. Co.* (*h*), the meaning of the words "lands delineated upon the deposited plans" was considered at great length, and it was held that they were not limited to mean lands surrounded by lines on every side, but included lands so sketched, represented or shown that the owners would have notice

(*d*) The deposit of plans and sections and a book of reference are required by the Standing Orders of Parliament (*q.v.*) in most cases where it is proposed to construct works.

(*e*) *Dowling v. Pontypool, &c. Rail. Co.* (1874), L. R. 18 Eq. 714; 43 L. J. Ch. 761; cf. *Doe d. Payne v. Bristol, &c. Rail. Co.* (1840), 6 M. & W. 320; *Doe d. Armistead v. North Staffordshire Rail. Co.* (1851), 16 Q. B. 526; 20 L. J. Q. B. 249; *Finck v. L. & S. W. Rail. Co.* (1890), 44 Ch. D. 330; 59 L. J. Ch. 458; *Protheroe v. Tottenham, &c. Rail. Co.*, [1891] 3 Ch. 278.

(*f*) *Farmer v. Waterloo & City Rail. Co.*, [1895] 1 Ch. 527; 64 L. J. Ch. 338.

(*g*) *Metropolitan Rail. Co. v. Fowler*, [1893] A. C. 416; 62 L. J. Q. B. 553.

(*h*) (1874), L. R. 18 Eq. 714; 43 L. J. Ch. 761.

that their property might be taken. Hall, V.-C., says (*i*), "And it must be borne in mind what the object of depositing the plans and of the books of reference is, such object being to give notice to the public, and landowners in particular, where the promoters of the company propose to acquire power to construct the railway and works. If the plaintiffs, who had notice of the bill in Parliament, and, as their evidence shows, personally or by their agents, examined the bill and plans, and opposed the bill, and obtained the insertion of clauses for their protection, had not notice by the plans and books of reference that the small piece of land in question might be taken, they had not the opportunity of objecting to the creation of compulsory powers in reference thereto. I cannot bring myself to believe that the plaintiffs had not such notice. I do not think it necessary to determine which, if any, of the views which the witnesses have put forward as to the mode of completing the inclosure of land numbered but not wholly surrounded by lines is the correct one. I think no hard and fast rule can be laid down, and that each case must depend on its own circumstances. I say, enter upon the land with the map and book of reference in hand; observe the line of railway as laid down, the limits of deviation, the several numbers on the map, the fences and other boundaries, and ask yourself the question whether the piece of land in question is delineated and described. My answer to the question is, in the present case, in the affirmative. I consider that 'delineated' cannot in this Act be interpreted as meaning, surrounded in every part by lines. I think it is manifest that a broader interpretation of it must be adopted in order to give effect to the Act. If it be necessary to say what it does mean, I say I think it means sketched or represented, or so shown that the landowners would have notice that the land might be taken" (*j*).

Construction
of word "de-
lineated."

This decision gives a wide interpretation to the word "delineated." The width of the definition has been questioned in the Court of Appeal (*k*), Fry, L. J., saying, "I cannot help thinking that Hall, V.-C., in *Dowling's case* (*l*), put as wide an interpretation upon the word 'delineated' as it could possibly bear.

(*i*) P. 740.

(*j*) Cf. *Wrigley v. Lancashire & Yorkshire Rail. Co.* (1863), 9 Jur. N. S. 710, which is distinguished from this case by Hall, V.-C.

(*k*) *Protheroe v. Tottenham, &c. Rail. Co.*, [1891] 3 Ch. 278, 290.

(*l*) (1874), L. R. 18 Eq. 714; 43 L. J. Ch. 761.

Whether it is not rather wider than I should put upon it is a point on which I need express no opinion." And more recently in the Scottish Courts it has been held that a notice to take land was invalid in that no boundary line was shown on one of the four sides of a plot which was proposed to be taken, and two of the other boundary lines being parallel there existed from a reasonable point of view a doubt as to the limits of the land to be taken (*m*). The difficulty, however, arises rather in the application than in the statement of the principle, and *Protheroe v. Tottenham, &c. Rail. Co.* shows that plans should be prepared with sufficient accuracy to prevent the recurrence of similar questions, and to give clear notice to the landowner that his lands are required to be taken (*n*). In *Dowling v. Pontypool, &c. Rail. Co.* (*o*), the evidence of engineers, as experts, on the construction of the plans was held to be inadmissible.

Limits of deviation.

When, in the case of the introduction of bills containing a form of clause similar to that specified above (*p*), it is the intention of parties to apply for power to make any lateral deviation from the line of the proposed work, the limits of such deviation are defined upon the deposited plan, and all lands included within such limits are marked thereon. The purpose for which limits of deviation are introduced into plans is, to allow a certain latitude in the construction of the centre line of the works authorized, and they are not intended to define the area within which promoters of undertakings may purchase and take lands.

Centre line of an undertaking must be within limits of deviation.

It is only in an indirect way that limits of deviation affect the area of lands which the promoters of the undertaking are authorized to purchase or take. They prescribe the lateral deviations beyond which the centre line of the undertaking shall not extend, and it would be inconsistent with their powers if the promoters of the undertaking purchased or took lands with the object of placing the centre line of the undertaking outside the authorized boundaries (*q*). The word "deviation" simply means shifting the work in its entirety from one side to another, and does not imply a right not only to alter the situation of the work, but in doing so to dispense

(*m*) *Coats v. Caledonian Rail. Co.* (1904), 6 F. 1042.

(*n*) *Protheroe v. Tottenham, &c. Rail. Co.*, [1891] 3 Ch. 278; cf. *Finck v. L. & S. W. Rail. Co.* (1890), 44 Ch. D. 330; 59 L. J. Ch. 458.

(*o*) See note (*l*), *ante*, p. 19.

(*p*) *Ante*, p. 18.

(*q*) *Finck v. L. & S. W. Rail. Co.* (1890), 44 Ch. D. 330; 59 L. J. Ch. 458; *Protheroe v. Tottenham, &c. Rail. Co.*, [1891] 3 Ch. 278.

with one-half or two-thirds of it (*r*). The limits of deviation have not the same application to the widening of an existing line (*s*), or to a junction with an existing line (*t*), as to a new line of railway.

Limits of deviation in special cases.

In *Doe d. Payne v. Bristol and Exeter Rail. Co.* (*u*), it was decided that the limits of deviation do not prevent a company from taking, for purposes other than the line of railway, lands delineated in the deposited plans outside such limits. In his judgment (*x*), Alderson, B., states what is meant by "line of railway": "With respect to the deviation, which seems to be the principal point upon which the opinion of the Court was sought to be obtained, as a guide for the construction of Acts of Parliament of this kind in future, it appears to me, I own, to be a very simple question. In the parliamentary plans a line is laid down, and a certain deviation from that line is permitted to take place. . . . What is 'the line' laid down in the parliamentary plans? what line across the face of the country does it represent? It appears to me that it represents the *medium filum viæ* of the railway which is to be thereafter made; and the deviation which is to be allowed is to be a deviation between the *medium filum viæ* of the railway, as described by the parliamentary plans, and the *medium filum viæ* of the railway which is ultimately to be laid down; and if between these two corresponding points an interval of not more than one hundred yards exists, measured in a horizontal level, the deviation does not exceed that which is allowed by the Act of Parliament to be made. . . . This provision, as it appears to me, does not extend to more than the *line of railway*: it does not extend to slopes and embankments."

"Line of railway."

In *Doe d. Armistead v. North Staffordshire Rail. Co.* (*y*), an action of ejectment for lands in Staffordshire, Patteson, J., said (*z*), "But it is contended, secondly, that as to fifteen perches, the entry was not lawful, and being bad in part, is bad altogether: first, because they are beyond the line of deviation.

(*r*) *Herron v. Rathmines & Rathgar Improvement Commrs.*, [1892] A. C. 498.

(*s*) *Finck v. L. & S. W. Rail. Co.* (1890), 44 Ch. D. 330, 337, 347; 59 L. J. Ch. 458.

(*t*) *Cardiff Rail. Co. v. Taff Vale Rail. Co.*, [1905] 2 Ch. 289, in which the opinion of Kay, J., in *Finck's* case, *supra*, was adopted and applied.

(*u*) (1840), 6 M. & W. 320.

(*x*) At p. 345.

(*y*) (1851), 16 Q. B. 526; 20 L. J. Q. B. 249.

(*z*) At p. 537.

With respect to the first ground of objection, we are of opinion that the expression 'deviation' in the Acts of Parliament, and particularly 8 & 9 Vict. c. 20, s. 15, is to be taken with reference to the line of railway only; that is, that the line of railway actually laid down shall not deviate more than one hundred yards from the line laid down and delineated in the parliamentary plans, the *medium filum viæ* of each being the commencement and termination in measuring those one hundred yards. This appears to be the natural construction of the Acts, and is in accordance with the decision of the Court of Exchequer in *Doe d. Payne v. Bristol and Exeter Rail. Co.*, and of the Vice-Chancellor of England in *Crawford v. Chester and Holyhead Rail. Co.* (a). In this case there has been no deviation in that sense; and the first ground of objection is not, in truth, raised by the facts" (b).

Lands within limits of deviation are "delineated."

Lands included within the limits of deviation are without doubt lands "delineated" on the deposited plans, if required for the actual construction of the works. In *Dowling v. Pontypool, &c. Rail. Co.* (c), Hall, V.-C., says (d), "But although the lines showing limits of deviation may not be a delineating of the land, the laying down on the deposited plan of a centre line and limits of deviation shows that parliament considered land within such limits to be comprehended within the words 'delineated' and 'described,' and that the words 'delineated' and 'described' should not, at least as regards the line itself, be construed as meaning only lands which are on the whole of each side bounded by a line. I hold that, for the construction of the railway itself, land within the limits of deviation, but not so bounded, may be taken" (e).

How errors in plans can be remedied.

Section 7 of the Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), provides that omissions, misstatements, or erroneous descriptions of any lands, or of the owners, lessees, or occupiers of any lands described on the plans or books of reference mentioned in the special Act, which have arisen from mistake, may be corrected on

(a) (1847), 11 Jur. 917.

(b) Cf. *Cotter v. Midland Rail. Co.* (1848), 2 Ph. 469.

(c) (1874), L. R. 18 Eq. 714; 43 L. J. Ch. 761. Cf. *Doe d. Armistead v. North Staffordshire Rail. Co.* (1851), 16 Q. B. 526, *per* Patteson, J., at p. 538: "It was assumed at the trial that the company were entitled to take at all events what was within the line of deviation."

(d) P. 738.

(e) See *Protheroe v. Tottenham, &c. Rail. Co.*, [1891] 3 Ch. 278; *Finck v. L. & S. W. Rail. Co.* (1890), 44 Ch. D. 330; 59 L. J. Ch. 458.

the certificate of two justices (*f*). If powers for rectifying mistakes made in the deposited plans and books of reference are required in undertakings to which no general Act containing such powers applies, they should be inserted in the special Act.

The purposes for which lands may be purchased or taken are defined in the special Act or Acts under which a company is incorporated (*g*), and it is inadmissible to interpret the Act by any reference to the bill; but it is legitimate to consider the subject-matter which the legislature was dealing with, and the relevant facts which then existed (*h*). Nothing that has passed in parliamentary committees between the landowner and the promoters prior to the passing of a bill will in any way control the construction of the Act, or create an equity as between the landowner and the undertakers (*i*). A contract purporting to bind promoters and their successors not to use lands in accordance with their statutory powers is void (*k*); nor can a statutory body dedicate to the public a right of way which would be incompatible with its statutory objects or the special purpose for which it was incorporated (*l*). It is, however, competent to give an undertaking not inconsistent with the exercise of the statutory powers, and such undertaking may form an element in the assessment of compensation (*m*). A company may use its property in the same way as

Purposes for which lands can be taken are defined in special Act.

(*f*) This section has been held to apply only in cases where there is neither doubt nor controversy as to the identity of the lands described, but where there is some omission or error in the description: *R. v. Cork Justices*, [1910] 2 Ir. R. 421. Cf. the similar provisions of the Waterworks Clauses Act, 1847, s. 7, and the Harbours, &c. Clauses Act, 1847, s. 7.

(*g*) *North British Rail. Co. v. Tod* (1846), 12 Cl. & F. 722; *Taff Vale Rail. Co. v. Cardiff Rail. Co.*, [1917] 1 Ch. 299.

(*h*) *Herron v. Rathmines & Rathgar Improvement Commissioners*, [1892] A. C. 498, at p. 552.

(*i*) *Steele v. Midland Rail. Co.* (1866), L. R. 1 Ch. 275, 291; *North British Rail. Co. v. Tod* (1846), 12 Cl. & F. 722.

(*k*) *Ayr Harbour Trustees v. Oswald* (1883), 8 App. Cas. 623; *Staffordshire, &c. Canal Co. v. Birmingham Canal Co.* (1836), L. R. 1 H. L. 254; 35 L. J. Ch. 757; *Mulliner v. Midland Rail. Co.* (1879), 11 Ch. D. 611; 48 L. J. Ch. 258; *In re South Eastern Rail. Co. and Wiffin's Contract*, [1907] 2 Ch. 366.

(*l*) *Great Western Rail. Co. v. Solihull R. D. C.* (1902), 86 L. T. 852; *Lancashire & Yorkshire Rail. Co. v. Davenport* (1906), 4 L. G. R. 425; *Taff Vale Rail. Co. v. Pontypridd U. D. C.* (1905), 93 L. T. 126; *Att.-Gen. v. London & South Western Rail. Co.* (1905), 21 T. L. R. 220; *G. C. Rail. Co. v. Balby-with-Heathorpe U. D. C.*, [1912] 2 Ch. 110.

(*m*) *In re Gonty and Manchester, Sheffield & Lincolnshire Rail. Co.*, [1896] 2 Q. B. 439; 65 L. J. Q. B. 625; cf. *Caledonian Rail. Co. v. Turcan*, [1898] A. C. 256; 67 L. J. P. C. 69; *South Eastern Rail. Co. v. Associated Portland Cement Manufacturers* (1900), Ltd., [1910] 1 Ch. 13.

an individual, provided that such use is not inconsistent with the statutory duties or *ultra vires*, and is not an infringement of the rights of other persons (*n*).

Construction
of special
Act.

Where the language used in the incorporating Act or Acts is not ambiguous, it is to be construed in its ordinary and literal meaning, and it makes no difference whether the powers have been conferred upon a company for the purpose of making profit or upon a corporation or public body for the purpose of carrying out a public improvement. In *Donaldson v. Mayor, &c. of South Shields* (*o*), the corporation were empowered to execute certain defined street works, and gave a notice to treat, including lands not required for such works, but intending to re-sell such lands to recoup a part of their expenses. It was held that they were not entitled to acquire any part of the lands not actually required for the street works.

In cases of ambiguity, the rule of construction has been applied that a public company or individuals who claim special privileges under statutory powers are bound to satisfy the Courts that the Act or Acts on which they rely confer such privileges with sufficient clearness (*p*).

In *Webb v. Manchester and Leeds Rail. Co.* (*q*), Cottenham, L. C., says, "The powers are so large—it may be necessary for the benefit of the public—but they are so large, and so injurious to the interests of the individuals, that I think it is the duty of every Court to keep them most strictly within those powers; and if there be any reasonable doubt as to the extent of their powers, they must go elsewhere and get enlarged powers; but they will get

(*n*) *R. v. Leake* (1833), 5 B. & Ad. 469; *Att.-Gen. v. Great Eastern Rail. Co.* (1879), 5 App. Cas. 473; 49 L. J. Ch. 545; *Bonner v. Great Western Rail. Co.* (1883), 24 Ch. D. 1; *Grand Junction Canal Co. v. Petty* (1888), 21 Q. B. D. 273; 57 L. J. Q. B. 572; *Foster v. London, Chatham & Dover Rail. Co.*, [1895] 1 Q. B. 711; 64 L. J. Q. B. 65; *In re Gonty and Manchester, Sheffield & Lincolnshire Rail. Co.*, [1896] 2 Q. B. 439; 65 L. J. Q. B. 625; *Att.-Gen. v. Teddington U. D. C.*, [1898] 1 Ch. 66; 67 L. J. Ch. 23; *Att.-Gen. v. Hanwell U. D. C.*, [1900] 2 Ch. 377; 69 L. J. Ch. 626; *Lancashire & Yorkshire Rail. Co. v. Davenport* (1906), 4 L. G. R. 425; *Taff Vale Rail. Co. v. Pontypridd U. D. C.* (1905), 93 L. T. 126; *Att.-Gen. v. Pontypridd U. D. C.*, [1906] 2 Ch. 257.

(*o*) (1899), 68 L. J. Ch. 162.

(*p*) *Clowes v. Staffordshire Potteries Waterworks Co.* (1872), L. R. 8 Ch. 125; 42 L. J. Ch. 107; *Lamb v. North London Rail. Co.* (1869), L. R. 4 Ch. 522.

(*q*) (1839), 4 Myl. & Cr. 116.

none from me by way of construction of their Act of Parliament" (r).

In many private Acts of Parliament special clauses are introduced which embody agreements between the promoters of the undertaking and persons whose interests are affected. There can be no reason why such agreements should be construed adversely to the promoters, since they are put in at the instance of particular parties, who either act with greater caution than other parties, or with a desire to make a better bargain for themselves than other parties have made (s).

Special clauses incorporating agreements.

It has been said that the principle of construing special Acts strictly against the promoters where the language is ambiguous (t) is not equally applicable in the case of a public body on which powers have been conferred to carry out works of a public character (u).

Construction in case of public bodies.

The word "undertaking" has been construed to include "the whole undertaking," and it has been held that compulsory powers cannot be enforced for the purpose of carrying out a portion only of the works, if there is a clear intention not to complete the rest. In *Agar v. Regent's Canal Co.* (x), Lord Eldon, on the motion of a landowner, restrained the company from proceeding to acquire lands, on the ground that the Court was satisfied that the company

Construction of word "undertaking."

(r) Cf. *Parker v. Great Western Rail. Co.* (1844), 7 Macn. & G. 253, at p. 288, *per* Tindal, C. J.: "It is to be observed, that the language of these Acts of Parliament is to be treated as the language of the promoters of them. They ask the legislature to confer great privileges upon them, and profess to give the public certain advantages in return. Therefore, Acts passed under such circumstances should be construed strictly against the parties obtaining them but liberally in favour of the public"; *Att.-Gen. v. Barnet District Gas and Water Co.* (1910), 74 J. P. 193, *per* Loreburn, L. C.: "I think one ought to scan very jealously the language of an Act which bestows powers like these." See also *Scales v. Pickering* (1828), 4 Bing. 448; *River Dun Navigation v. North Midland Rail. Co.* (1838), 1 Rail. Cas. 135; *Simpson v. South Staffordshire Waterworks Co.* (1865), 34 L. J. Ch. 380; *Clowes v. Staffordshire Potteries Waterworks Co.* (1872), L. R. 8 Ch. 125; 42 L. J. Ch. 107.

(s) *East London Rail. Co. v. Whitechurch* (1874), L. R. 7 H. L. 81; 43 L. J. M. C. 159; and see *Blackpool Corporation v. Starr Estate Co., Ltd.*, [1922] 1 A. C. 27, *post*, p. 319.

(t) This rule is limited to cases of ambiguity: *Donaldson v. Mayor of South Shields* (1899), 68 L. J. Ch. 162.

(u) *North London Rail. Co. v. Metropolitan Board of Works* (1859), 28 L. J. Ch. 909; *Galloway v. Mayor and Commonalty of London* (1866), L. R. 1 H. L. 34; cf. *Quinton v. Corporation of Bristol* (1874), L. R. 17 Eq. 524.

(x) (1814), 1 Swanst. 250, n.

were unable to carry out the whole of their undertaking, and that they were not authorized to put in force their powers for the purpose of completing a portion only of the undertaking (*y*). Any person whose property is interfered with under parliamentary authority has a right to require that the promoters shall comply with the letter of the enactment so far as it makes provisions in his behalf, and no Court can remodel arrangements sanctioned or relax conditions imposed by Act of Parliament (*z*).

In *Cohen v. Wilkinson* (*a*), a shareholder was held entitled to an injunction restraining the company from proceeding to make a portion only of the undertaking, with the intention of not completing the whole. The Master of the Rolls says, "The obligation to complete the work appears to me to be co-extensive with the authority to make it. Neither this Act, nor any of these Acts, contain authority to substitute a less work, or part of the whole, and if the governors or directors of the company take on themselves to determine that they will not perform the whole work but will apply the capital, collected on the faith of the whole work being completed, in completing only a part of it, I am of opinion that the determination is without authority, and contrary to the provisions of the Act of Parliament" (*b*).

Construction
of special
Act.

Nor can the word "undertaking" include the construction of any works beyond those specified in the special Act or Acts. As Lord Westbury, L. C., says, with reference to the effect of the incorporation of the general Act into the special Act, "the general Act must be looked at with reference to the powers conferred upon companies of dealing with land when acquired; but it is to the special Act that you must especially have regard for the purpose of ascertaining what I may call the contract between the landowner and the company, and the power which the company has conferred upon it of taking the land of the landowner" (*c*). And more recent cases have turned on the construction of the special Act or

(*y*) Cf. *Mayor of King's Lynn v. Pemberton* (1818), 1 Swanst. 244; *Salmon v. Randall* (1838), 3 Myl. & Cr. 439; *Herron v. Rathmines and Rathgar Improvement Commissioners*, [1892] A. C. 498.

(*z*) *Herron v. Rathmines and Rathgar Improvement Commissioners*, [1892] A. C. 498.

(*a*) (1849), 18 L. J. Ch. 378.

(*b*) *Colman v. Eastern Counties Rail. Co.* (1846), 10 Beav. 1.

(*c*) *Simpson v. South Staffordshire Waterworks Co.* (1865), 34 L. J. Ch. 380, at p. 387.

Acts in question and the extent and manner of the incorporation of the general Act (d).

In *Att.-Gen. v. Barnet District Gas & Water Co.* (d) it was emphasized in the Court of Appeal that the construction placed on another special Act formed no ground of decision upon the question of the true construction of the special Act under consideration.

In *Mayor of Cardiff v. Cardiff Waterworks Co.* (e), the company were proceeding to lay down waterpipes which, though suitable for the area within which they had power to supply water, were admittedly intended to carry water beyond the limits authorized by the statute. Wood, V.-C., restrained the company from proceeding, on the ground that by laying down pipes intended for the supply of a larger area than that defined by Parliament, they contemplated entering upon streets for purposes other than those of the incorporating Acts.

Lands are not required for the purposes of the undertaking when it is intended to employ them for collateral objects; although such objects may be convenient or necessary for carrying out the undertaking authorized. Lands cannot be taken for collateral purposes.

In *Bentinck v. Norfolk Estuary Co.* (f), a company obtained an Act incorporating the Companies Clauses Acts and the Lands Clauses Acts, but not the Railways Clauses Acts, and were empowered to make and maintain upon the lands in question certain cuts and works, with authority to take and use such of the said lands as might be necessary for that purpose. The company claimed the right of taking the lands in question in order to obtain materials for the purpose of executing a portion of their works not immediately contiguous. It was held by the Lords Justices, confirming the judgment of Page-Wood, V.-C., that although it might be convenient or necessary for the company to take earth and soil from the land in question, they could not do so under their Act, which did not contemplate the fact of a landowner giving up his land for the purpose of digging materials or for any

(d) In *Att.-Gen. v. Barnet District Gas and Water Co.* (1910), 74 J. P. 1, 193, the House of Lords, affirming the Court of Appeal, decided in favour of the promoters; in *Att.-Gen. v. Frimley and Farnborough District Water Co.*, [1908] 1 Ch. 727 (which was followed in *Marriott v. East Grinstead Gas and Water Co.*, [1909] 1 Ch. 70, and *Att.-Gen. v. South Staffordshire Waterworks Co.* (1909), 25 T. L. R. 408), the decision of the Court of Appeal was against the promoters.

(e) (1859), 5 Jur. N. S. 953.

(f) (1857), 8 De G. M. & G. 714; 26 L. J. Ch. 404.

other purpose than the execution of the cuts and works therein specified (*g*).

In *Galloway v. Mayor and Commonalty of London* (*h*), Lord Cranworth, L. C., says, "The case of the appellant, Mr. Galloway, rested on a principle well recognized, and founded on the soundest principles of justice. The principle is this, that when persons embarking in great undertakings, for the accomplishment of which those engaged in them have received authority from the legislature to take compulsorily the lands of others, making to the latter proper compensation, the persons so authorized cannot be allowed to exercise the powers conferred on them for any collateral object; that is, for any purposes except those for which the legislature has invested them with extraordinary powers" (*i*).

Limit of time
for entry on
lands.

Lands, if required for the purpose of carrying out works, may be entered upon even at so short a time before the expiration of the period fixed by the special Act for their completion, that construction within the limits of such period is not practicable, provided that the undertakers make the entry *bonâ fide* for the purpose of executing the works (*k*). Lord Blackburn, in *Tiverton, &c. Rail. Co. v. Loosemore* (*k*), expressed an opinion that when once the undertakers had possession of the land they could, by the exercise of their common law powers as landowners, complete the railway, provided that this was practicable without using some power which had been granted by the Act, but had expired by effluxion of time; and this opinion was in substance approved and adopted in *Midland Rail. Co. v. Great Western Rail. Co.* (*l*). But a public body cannot employ compulsory powers to acquire land for a purpose which it is not legally competent to carry out (*m*).

What are
"purposes
of the under-
taking."

In numerous instances the words "purposes of the undertaking" have received a more general interpretation.

(*g*) Cf. *Eversfield v. Mid Sussex Rail. Co.* (1858), 3 De G. & J. 286; *Vane v. Cockermouth Rail. Co.* (1865), 13 W. R. 1015; *Dodd v. Salisbury and Yeovil Rail. Co.* (1859), 1 Giff. 158.

(*h*) (1866), L. R. 1 H. L. 34; 35 L. J. Ch. 477.

(*i*) Cf. *Donaldson v. Mayor, &c. of South Shields* (1899), 68 L. J. Ch. 162; *Att.-Gen. v. Pontypridd U. D. C.*, [1906] 2 Ch. 257.

(*k*) *Tiverton, &c. Rail. Co. v. Loosemore* (1884), 9 App. Cas. 480; 53 L. J. Ch. 812.

(*l*) [1908] 2 Ch. 644; [1909] A. C. 445.

(*m*) *Batson v. London School Board* (1903), 67 J. P. 457.

In *Cotter v. Midland Rail. Co.* (*n*), "railways and works" were held to include "stations." Lord Cottenham, L. C., says, "It seems to me, however, that these provisions do include ample powers for these purposes . . . I consider that all land, authorized to be taken as necessary, in the terms of the Act, for the purpose of making and maintaining the railway and works, is liable to be so taken whether necessary for the actual line of railway or for stations or other conveniences necessary for the making of the railway; and the purposes for which the plaintiff's land is required clearly fall within that description."

In *Rangeley v. Midland Rail. Co.* (*o*), it was decided that lands required for the diversion of a public footpath under section 16 of the Railways Clauses Act were lands required "for the purposes of the Act."

In *Earl Beauchamp v. Great Western Rail. Co.* (*p*), it was decided that lands required for making accommodation works, which the company were compellable to make, were lands required "for the purposes of the Act."

In *Sadd v. Maldon, &c. Rail. Co.* (*q*), a railway company was held to be empowered, under section 16 of the Railways Clauses Act, 1845, to take lands within the limits of deviation for the purpose of making a convenient access from a river to a station.

In *Simpson v. South Staffordshire Waterworks Co.* (*r*), a waterworks company were authorized, so far as related to the field in question, to make an "aqueduct, constructed in a tunnel or otherwise, as shown on the original plans." It was held that the company had not power permanently to acquire the field, in order to obtain an additional supply of water, and to erect thereon permanent pumping stations for raising water from beneath its surface.

Section 16 of the Railways Clauses Act, 1845, after empowering a railway company to carry out certain specific works, authorizes them to "do all other acts necessary for making, maintaining, altering or repairing and using the railway." Works are not

(*n*) (1848), 2 Ph. 469.

(*o*) (1868), L. R. 3 Ch. 306; 37 L. J. Ch. 313; *Finck v. L. & S. W. Rail. Co.* (1890), 44 Ch. D. 330; 59 L. J. Ch. 458.

(*p*) (1868), L. R. 3 Ch. 745; 38 L. J. Ch. 162; *Wilkinson v. Hull, &c. Rail. and Dock Co.* (1882), 20 Ch. D. 323; 51 L. J. Ch. 788.

(*q*) (1851), 6 Ex. 143; 20 L. J. Ex. 102.

(*r*) (1865), 34 L. J. Ch. 380. But cf. the cases referred to on p. 27, *ante*.

necessary within the meaning of this section which are only convenient to a railway company on the ground of economy (*s*); the section is, however, not restricted to works of absolute physical necessity (*t*).

An object not expressly sanctioned, but fairly derivable from the statutory powers of the company, is not to be regarded as collateral; and to carry out such an object land delineated on the plans might be properly taken (*u*).

Where purpose is authorized, promoters decide if lands are required. Decision must be *bonâ fide*.

Where the purposes for which lands are intended to be taken are such as the special Act or Acts authorize, the promoters of the undertaking, if they act *bonâ fide*, are the sole judges to determine in what way and on what lands any particular work shall be constructed.

This was decided in *Stockton and Darlington Rail. Co. v. Brown* (*x*); Lord Cranworth, L. C., says, "I think it clear that where the legislature authorizes railway directors to take, for the purposes of their undertaking, any lands specially described in their Act, it constitutes them the sole judges as to whether they will or will not take those lands: provided only that they take them *bonâ fide* with the object of using them for the purposes authorized by the legislature, and not for any sinister or collateral purpose. This is the construction to be put on all such legislative powers, whether the language of the Act is that the company may take so much of the land as is necessary for the undertaking, or so much as is required or is expedient to be taken, or simply (as in this case) that the company may take lands for the purposes of the undertaking. In such cases the legislature, having provided what it considers sufficient means for securing adequate compensation to the owners of the land, leaves it to those interested in the undertaking to say

(*s*) *R. v. Wycombe Rail. Co.* (1837), L. R. 2 Q. B. 310; 36 L. J. Q. B. 121; *Fenwick v. East London Rail. Co.* (1875), L. R. 20 Eq. 544; 44 L. J. Ch. 602; *Pugh v. Golden Valley Rail. Co.* (1877), 15 Ch. D. 330; 49 L. J. Ch. 721; *Att.-Gen. v. Metropolitan Rail. Co.*, [1894] 1 Q. B. 384; cf. *West India Electric Co. v. Kingston Corporation*, [1914] A. C. 986.

(*t*) *Sadd v. Maldon Rail. Co.* (1851), 6 Ex. 143; 20 L. J. Ex. 102; *Att.-Gen. v. Eastern Counties, &c. Rail. Co.* (1842), 10 M. & W. 263; 12 L. J. Ex. 106; cf. *Harrison v. Southwark & Vauxhall Water Co.*, [1891] 2 Ch. 409; 60 L. J. Ch. 630.

(*u*) Cf. *Ashbury Railway Carriage Co. v. Riche* (1875), L. R. 7 H. L. 653; 44 L. J. Ex. 185; *Att.-Gen. v. G. E. Rail. Co.* (1880), 5 App. Cas. 473; 49 L. J. Ch. 545.

(*x*) (1860), 9 H. L. C. 246; *City of Glasgow Union Rail. Co. v. Caledonian Rail. Co.* (1871), L. R. 2 H. L. (Sc.) 160.

to what extent it will be useful to them to exercise their statutable powers."

In *Kemp v. South Eastern Rail. Co.* (y), Lord Hatherley, L. C., says, "I think it very important that the principle laid down in the case of *Stockton and Darlington Rail. Co. v. Brown* should be considered as settled, and that the Court should be saved from a deluge of affidavits as to whether land is required or not, by simply saying that the Court will take the engineer's word for it, when he gives it with a reasonable appearance of accuracy."

In *Flower v. London, Brighton and South Coast Rail. Co.* (z), Kindersley, V.-C., held that an affidavit of the company's engineer, merely stating that "the land was or would be required for the purpose of the Act," did not give sufficient information to the Court to enable the Court to say that the company were *bonâ fide* taking the lands for the purposes of the Act. This case was decided on the ground of the insufficiency of the evidence contained in the engineer's affidavit, and does not in any way conflict with the principle laid down in *Stockton and Darlington Rail. Co. v. Brown* (a).

The onus of proving the want of *bona fides* rests upon the party opposing the purchase (b).

Where the purpose for which the land is required is expressly authorized by the special Act, the company are not bound to choose some other site more convenient to other persons in order to prevent a nuisance (c). Section 9 of the Gasworks Clauses Act, 1871, does not exonerate the undertakers from proceedings for nuisance, and a gas company has no authority so to construct its works as to occasion a nuisance (d).

(y) (1872), L. R. 7 Ch. 364; 41 L. J. Ch. 404.

(z) (1865), 2 Dr. & Sm. 330; 34 L. J. Ch. 540, quoted with approval in *Kemp's* case, *supra*.

(a) *Richards v. Scarborough Public Market Co.* (1853), 23 L. J. Ch. 110; *Wilkinson v. Hull, &c. Rail. and Dock Co.* (1882), 20 Ch. D. 323; 51 L. J. Ch. 788; *Errington v. Metropolitan District Rail. Co.* (1882), 19 Ch. D. 559; 51 L. J. Ch. 305.

(b) *Errington v. Metropolitan District Rail. Co.* (1882), 19 Ch. D. 559; 51 L. J. Ch. 305.

(c) *London, Brighton & South Coast Rail. Co. v. Truman* (1885), 11 App. Cas. 45; 50 L. J. Ch. 354; cf. *Goldberg & Sons v. Liverpool Corporation* (1900), 16 T. L. R. 320.

(d) *Jordeson v. Sutton, &c. Gas Co.*, [1899] 2 Ch. 217; 68 L. J. Ch. 457; cf. with respect to hospitals, *Metropolitan Asylum District v. Hill* (1881), 6 App. Cas. 193; 50 L. J. Q. B. 353; *Withington L. B. v. Manchester Corpora-*

PART II. —SPECIAL CASES.

Special cases in which promoters can purchase or take lands. THE limits within which the promoters of the undertaking may purchase and take, or may be compelled to purchase and take, lands, depend in a few cases on provisions of a special character.

1. Lands for Extraordinary Purposes.

For extraordinary purposes.

In a number of special Acts, and particularly in those which have reference to the construction of railways, the promoters of the undertaking are authorized to purchase, by private treaty and agreement, some specified quantity of land for extraordinary purposes. Under this provision, lands, up to the specified amount, may be acquired by agreement as additional accommodation becomes necessary.

In *City of Glasgow Union Rail. Co. v. Caledonian Rail. Co. (e)*, Lord Westbury expressed a doubt whether lands within the limits of deviation could be regarded as lands acquired for extraordinary purposes by private treaty. It was unnecessary to decide the question, because the time for the exercise of compulsory powers had expired prior to the acquisition of the lands.

S. 45, Rail. Cl. Act, 1845.

Section 45 of the Railways Clauses Act, 1845, defines extraordinary purposes, where the undertaking authorized is the construction of a railway, to be—

“The making and providing additional stations, yards, wharfs, and places for the accommodation of passengers, and for receiving, depositing, loading or unloading goods or cattle to be conveyed upon the railway, and for the erection of weighing machines, toll houses, offices, warehouses, and other buildings and conveniences :

The making convenient roads or ways to the railway, or any other purpose which may be requisite or convenient for the formation or use of the railway.”

If the purpose is authorized by the special Act, the railway company, so long as they act *bonâ fide*, are the sole judges whether it is necessary to take the lands in question for such purposes (f).

tion, [1893] 2 Ch. 19; 62 L. J. Ch. 393; *Att.-Gen. v. Nottingham Corporation*, [1904] 1 Ch. 673; 73 L. J. Ch. 512; and to electric light stations, *Shelfer v. City of London E. L. Co.*, [1895] 1 Ch. 287; 64 L. J. Ch. 216; *Colwell v. St. Pancras B. C.*, [1904] 1 Ch. 707; 73 L. J. Ch. 275; *Midwood & Co., Ltd. v. Manchester Corporation*, [1905] 2 K. B. 597.

(e) (1871), L. R. 2 H. L. (Sc.) 160.

(f) *City of Glasgow Union Rail. Co. v. Caledonian Rail. Co.* (1871), L. R.

Section 12 of the Lands Clauses Act, 1845, empowers owners to sell to the promoters of the undertaking lands required for extraordinary purposes ; section 13 empowers the promoters of the undertaking to sell such lands from time to time, and to purchase other lands for a like purpose, provided that at no time they hold more than the prescribed quantity ; section 14 prohibits the purchase by the promoters of the undertaking of more than the prescribed quantity of lands required for extraordinary purposes from owners who would be under disability, except for the powers of that and the special Act. Bramwell, L. J., expressed the opinion that sections 12 and 13 seemed to be intended to enable the promoters to acquire land which, at the time of the passing of the special Act, was not supposed to be required for the undertaking (*g*).

S. 12, L. Cl. Act, 1845.

S. 13.

S. 14.

2. Lands for Temporary Purposes.

Sections 30—44 of the Railways Clauses Act, 1845, prescribe the method by which, and the purposes for which, lands may be taken for temporary use during the construction of a railway.

For temporary purposes. Ss. 30—44, Rail. Cl. Act, 1845.

To entitle the railway company to enter upon or take lands under these sections, they must be able to show that the taking is necessary (*h*), and for a purpose authorized by the special Act. The words “the purposes aforesaid” in section 32 refer only to the purposes mentioned in that section.

A work is not “necessary” within the meaning of section 16 of the Railways Clauses Act, 1845, simply because it enables the company to execute their works more economically (*i*). A mortar mill (*i*), and a tramway (*k*), have been held not to be necessary within this section.

The purchase-money or compensation under these sections is assessed, paid, or deposited in accordance with the provisions of the Lands Clauses Acts.

Section 14 of the Regulation of Railways Act, 1842 (5 & 6 Vict. c. 55), gives railway companies certain powers of entering upon

2 H. L. (Sc.) 160; *Stockton and Darlington Rail. Co. v. Brown* (1860), 9 H. L. C. 246. *Vide ante*, p. 30.

(*g*) *Hooper v. Bourne* (1877), 3 Q. B. D. 258, at p. 272; 47 L. J. Q. B. 437.

(*h*) *Morris v. Tottenham, &c. Rail. Co.*, [1892] 2 Ch. 47; 61 L. J. Ch. 215.

(*i*) *Fenwick v. East London Rail. Co.* (1875), L. R. 20 Eq. 544; 44 L. J. Ch. 602.

(*k*) *Morris v. Tottenham, &c. Rail. Co.*, [1892] 2 Ch. 47; 61 L. J. Ch. 215.

adjoining lands for the purpose of repairing or preventing accidents.

3. Intersected Lands. Part of a House, etc.

Small portions
of intersected
lands.

S. 94, L. Cl.
Act, 1845.

Section 94 of the Lands Clauses Act, 1845, provides that if the works authorized intersect any lands, so as to leave on either side a piece of land less than half a statute acre, or of less value than the expense of making the prescribed communications, and if the owner has not other lands adjoining such piece of land, and requires the communications to be made, the promoters of the undertaking may require the owner to sell to them such piece of land. By this section the promoters of the undertaking cannot compel an owner to part with his piece of land, where it exceeds half a statute acre, if it is of greater value than the expense of making the prescribed communications; and the section further provides, that the same tribunal which assesses the value of such piece of land shall also inquire what would be the expense of making the prescribed communications, if required so to do by either party.

“Such land.”

The words “such land” refer to the introductory heading “small portions of intersected land,” and the section has a general application, including lands situate in a town or built upon which are excepted from the operation of section 93 (*l*). It does not apply where the portion of severed land gave access to the sea for bathing, fishing, shooting, and other conveniences (*m*). In proceedings before a jury under this section both parties pay their own costs, since the sections relating to costs in the Lands Clauses Act, 1845, do not apply (*n*), but if the proceedings are taken before an arbitrator, the arbitration would come within the Arbitration Act, 1889, which enables the arbitrator to award costs (*o*).

Two cases
where lands
must be taken
though not
required.

There are two cases in which the promoters of the undertaking can be compelled to purchase and take lands, although such lands are not shown on the deposited plans, and are not required for the purposes of the undertaking.

(*l*) *Eastern Counties and London and Blackwall Rail. Cos. v. Marriage* (1860), 9 H. L. C. 32; 31 L. J. Ex. 73.

(*m*) *Falls v. Belfast, &c. Rail. Co.* (1849), 12 Ir. L. R. 233.

(*n*) *Cobb v. Mid Wales Rail. Co.* (1866), L. R. 1 Q. B. 342; 35 L. J. Q. B. 117.

(*o*) Arbitration Act, 1889, s. 2, sched. I. (i), and s. 24; Appendix, p. 472.

1. Section 92 of the Lands Clauses Act, 1845, enacts : " That no party shall at any time be required to sell or convey to the promoters of the undertaking a part only of any house or other building or manufactory, if such party be willing and able to sell and convey the whole thereof."

1. Part only of a house, &c. cannot be taken.

Questions have arisen on nearly every word in this section, owing to the anxiety of promoters to escape the very onerous conditions which in some cases it imposes upon them. In many special Acts, and in some Acts of more general application, a section has been introduced, that promoters taking a part of a house, or other building, or manufactory, shall not be compelled to take the whole, unless the tribunal before which the compensation is assessed shall be of opinion that, by severing a portion of any house, other building, or manufactory, they cause material damage to the remainder ; provided that the company make compensation for any damage sustained by the owners thereof, or other parties interested therein, by severance or otherwise, or that may arise to the remainder of the premises in consequence of portions thereof being taken (*p*). A provision that such parts of the line as passed through a piece of land should be arched over so as to afford the owner communication between the severed portions was held not to exclude the operation of section 92 (*q*).

A party on whom the notice as to part of a house or other building or manufactory is rightly served is " a party able to sell and convey the whole thereof." This point appears to have been assumed without discussion in *Grosvenor v. Hampstead Junction Rail. Co.* (*r*), but is discussed in *Governors of St. Thomas' Hospital v. Charing Cross Rail. Co.* (*s*).

Who is able to sell the whole.

A leaseholder or other termor is a party able and willing to sell within the meaning of the section, so far as his term extends. The owner of the fee would exercise his option in respect of the reversion (*t*).

Termor is within section.

The words in the section, " shall at any time be required," must be read as equivalent to " shall at any time be compelled," and the owner may, up to the time of compulsion, assert his right not to

" Shall at any time be required."

(*p*) Cf. *Caledonian Rail. Co. v. Turcan*, [1898] A. C. 256; 67 L. J. P. C. 69; *post*, p. 43.

(*q*) *Sparrow v. Oxford, &c. Rail. Co.* (1852), 21 L. J. Ch. 731.

(*r*) (1857), 26 L. J. Ch. 731.

(*s*) (1861), 30 L. J. Ch. 395.

(*t*) *Pulling v. London, Chatham & Dover Rail. Co.* (1864), 33 L. J. Ch. 505.

convey unless he has precluded himself by a counter equity (*u*). He has not so precluded himself by offering to sell a part only at a price which the company have refused to adopt (*u*).

House.

Structure adapted to one occupation or purpose.

Any structure adapted for one occupation or purpose is a house, no part of which can be taken if the owner, by counter-notice, requires the company to take the whole. It is essential that a structure should be adapted for one occupation or purpose, and two semi-detached villas, built for the purpose of separate habitations, are not constituted one house by the continuity of open space beneath the roof above the party walls and by a continuous system of drains and gutters (*x*). The old St. Thomas' Hospital was held to fall within the meaning of the word "house" (*y*).

Not necessarily for residence.

It is not necessary that the structure should be adapted exclusively or primarily for purposes of residence. This question was fully discussed in the Court of Appeal in *Richards v. Swansea Improvement and Tramways Co.* (*z*). The plaintiff was owner of a leasehold house and buildings and of five freehold cottages abutting on the back of the house and buildings. The plaintiff used the house as a dwelling-house, and the shop and the buildings as a candle manufactory, candle store, bread store, and provision store. One of the cottages had been turned into a storehouse, and had been made to communicate with the house and buildings, and was used as a back entrance to them. The Court of Appeal, confirming the decision of the Court below, held that the cottage and house and buildings formed one house within the 92nd section of the Lands Clauses Consolidation Act, 1845. In his judgment, James, L. J., says: "Now, if the whole of this had been used by the plaintiff for his own residence merely as a private house there could be no question, as it seems to me, that the whole was one house; and although I have had occasion more than once to consider the matter, I am still of opinion, and will repeat it, that according to my view a house is not the less a house because it is a public-house or an inn; that it is not the less a house because it comprises or is used for the purpose of a shop, or because it comprises or is used for the purpose of a workshop or storehouse. Then, this being a house, all connected with one course of occupation and user, the plaintiff uses some of the rooms

(*u*) *Gardner v. Charing Cross Rail. Co.* (1862), 31 L. J. Ch. 181.

(*x*) *Harvie v. South Devon Rail. Co.* (1875), 32 L. T. 1.

(*y*) *Governors of St. Thomas' Hospital v. Charing Cross Rail. Co.* (1861), 30 L. J. Ch. 395.

(*z*) (1878), 9 Ch. D. 425.

for living in, first in his own person, and afterwards by his servants; he uses other parts of it for selling goods, other parts for making bread, other parts for making candles, other parts for grinding corn, and other parts for stables in which the horses are lodged that he finds it convenient to use. It seems to me, that unless we are to start with a proposition that a house ceases to be a house, either partly or partially, because part of it is used for the purpose of business, that this is as much a house as if it had been originally built in the exact shape in which it now is, and every room in the house as they are placed had been used for the purpose of a private residence."

If, as a fact, a house is held in one occupation, it makes no difference that it is held under different demises, or under a title which is derived from different sources (*a*).

The word "house" is used in its legal sense and comprises more than the actual structure, and includes land which, being necessary for its convenient use and occupation, would pass under the grant of a house (*b*). It does not include land in the occupation of any owner for the time being which is subsidiary to or necessary for his mere personal use and convenience, nor land held with a house for the purpose of more conveniently carrying on a trade or business (*c*); nor does it include portion of a private avenue, a quarter of a mile from the mansion, over which the company propose to carry a bridge (*d*).

House is used in its legal sense.

The garden, which is a piece of land attached to a house for its convenient use and occupation, is part of such house (*e*); and land, designed to be a garden to an unfinished house, is part of such house (*f*). The ornamental portions of a nursery garden are

House includes "garden;"

(*a*) *S. C.*; *MacGregor v. Metropolitan Rail. Co.* (1866), 14 L. T. 354; *Siegenberg v. Metropolitan District Rail. Co.* (1883), 49 L. T. 554.

(*b*) *Low v. Staines Reservoirs Joint Committee* (1900), 64 J. P. 212.

(*c*) *Co. Litt.* 56 *b*; *Shep. Touch.* pp. 89—94; *Steele v. Midland Rail. Co.* (1866), L. R. 1 Ch. 275; *Pulling v. London, Chatham & Dover Rail. Co.* (1864), 33 L. J. Ch. 505; *Fergusson v. London, Brighton & South Coast Rail. Co.* (1864), 33 L. J. Ch. 29; *Falkner v. Somerset and Dorset Rail. Co.* (1873), L. R. 16 Eq. 458; 42 L. J. Ch. 851; *Barnes v. Southsea Rail. Co.* (1884), 27 Ch. D. 536.

(*d*) *Allhusen v. Ealing and South Harrow Rail. Co.* (1898), 78 L. T. 285, 396.

(*e*) *Cole v. West London, &c. Rail. Co.* (1859), 28 L. J. Ch. 767; *Hewson v. London and South Western Rail. Co.* (1860), 2 L. T. 369; *King v. Wycombe Rail. Co.* (1860), 29 L. J. Ch. 462.

(*f*) *Alexander v. Crystal Palace Rail. Co.* (1862), 31 L. J. Ch. 500; *Grosvenor v. Hampstead Junction Rail. Co.* (1857), 26 L. J. Ch. 731.

not a nursery
garden used
for purposes
of business.

properly called garden, and are part of a house (*g*); but such portions as are merely used for the purpose of trading in flowers and fruit would more properly be called field, and are not part of a house (*h*).

Where the owner of a house had entered into an agreement to get occupation of a neighbouring field for the purpose of adding it to his garden, it was held in *Chambers v. London, Chatham & Dover Rail. Co.* (*i*), that though it might be contemplated to make such field into part of a house, yet that this had not been done at the time of giving the notice to treat, and that consequently the company could not be compelled to take the whole.

House
includes
"curtilage."

In *Marson v. London, Chatham & Dover Rail. Co.* (*k*), it was held that an open piece of land in front of a public-house, which formed the only means of approach by vehicles to the front door, and which had been treated as passing with the house by every demise of the public-house since 1802, came within the definition of a curtilage, and was part of the public-house, as being necessary for its convenient occupation.

Where a man had bought a piece of land, and had built on it a house, inclosing the land partly with a wall and partly with an ornamental hedge, so as to make it one entire and complete thing, and had formed a back entrance, it was held that the company could not take a portion of the road forming such back entrance without taking the whole (*l*). But where the owner of a house had bought land on the further side of a private road, and had erected thereon a stable, coachhouse, two cottages, greenhouse, &c., and a company had served notice to treat for the stables, &c. on the further side of the private road, it was held that the stables, &c. were not part of the house, and would not have passed under a conveyance of the house (*m*).

Other
building.

The words "other building" are not inserted in the section in order to limit the application of the word "house," but in order to extend its provisions to other things, which are not in the ordinary

(*g*) *Salter v. Metropolitan District Rail. Co.* (1870), L. R. 9 Eq. 432; 39 L. J. Ch. 567.

(*h*) *Falkner v. Somerset and Dorset Rail. Co.* (1873), L. R. 16 Eq. 458; 42 L. J. Ch. 851.

(*i*) (1863), 8 L. T. 235.

(*k*) (1868), L. R. 6 Eq. 101; 37 L. J. Ch. 483.

(*l*) *Barnes v. Southsea Rail. Co.* (1884), 27 Ch. D. 536. Cf. *Caledonian Rail. Co. v. Turcan*, [1898] A. C. 256; 67 L. J. P. C. 69.

(*m*) *Kerford v. Seacombe, &c. Rail. Co.* (1888), 57 L. J. Ch. 270.

sense houses, but are buildings in the nature of houses, although in ordinary language they would not be called houses, and to buildings connected with manufactories (*n*). They do not include entire undertakings such as that of the Regent's Canal and Dock Company (*o*).

The word "manufactory" is only applicable to a place where a manufacturing process is carried on. In *Reddin v. Metropolitan Board of Works* (*p*), Lord Westbury, L. C., held that the collection of dust was not a manufacturing process (*q*), and that therefore a shop used in connection with the business of a dust collector was not part of a manufactory. It has also been held that the preparation of packing requisites and the packing of tea for delivery to customers is not a manufacture, and that the premises used for these purposes are not a manufactory (*r*). In *Gibson v. Hammer-smith Rail. Co.* (*s*) the word "manufactory" was held to include trade fixtures, since trade fixtures are annexed to and form part of the premises, subject to the tenant's right of removal during his term. Manufactory;
includes trade fixtures.

Where a manufactory exists, a liberal construction is adopted in deciding over what space such manufactory extends. In *Richards v. Swansea Improvement and Tramways Co.* (*t*), it was held in the Court of first instance that it is sufficient if the main use is for manufacturing purposes, and that so long as the business is carried on as a whole it does not matter that the processes are for different manufactures producing different results, and in the Court of Appeal Brett, L. J., expressed his concurrence, though the case was not decided on that ground. It is not necessary that every part of what would reasonably be called a manufactory should actually be in use for the purpose of manufacture at the date of the notice to treat (*u*). Over what area manu-
factory
extends.

(*n*) *Grosvenor v. Hampstead Junction Rail. Co.* (1857), 26 L. J. Ch. 731, per Turner, L. J.; cf. *Richards v. Swansea Improvement and Tramways Co.* (1878), 9 Ch. D. 425; dicta of Brett and Cotton, L. JJ., pp. 434, 437; followed and applied, *Regent's Canal and Dock Co. v. L. C. C.*, [1912] 1 Ch. 583.

(*o*) *Regent's Canal and Dock Co. v. L. C. C.*, [1912] 1 Ch. 583.

(*p*) (1862), 31 L. J. Ch. 660.

(*q*) Cf. Public Health (London) Act, 1891, s. 22.

(*r*) *Benington v. Metropolitan Board of Works* (1885), 54 L. T. 837.

(*s*) (1863), 32 L. J. Ch. 337.

(*t*) (1878), 9 Ch. D. 425, 434.

(*u*) *Brook v. Manchester, Sheffield and Lincolnshire Rail. Co.*, [1895] 2 Ch. 571; 64 L. J. Ch. 890.

In *Spackman v. Great Western Rail. Co.* (*x*), it was held that cottages separated from the rest of the manufactory by a road, but used as the only warehouses in connection therewith, were part of the manufactory. With the cottages was a dwelling-house, and the Vice-Chancellor doubted whether such dwelling-house was or was not part of the manufactory.

In *Furniss v. Midland Rail. Co.* (*y*), a mill-goit and weir, which occasionally supplied motive power to a manufactory, were held to be part of such manufactory.

In *Sparrow v. Oxford, &c. Rail. Co.* (*z*), land included within the same wall with tinplate works, and used for deposit of ashes from the works, was held to be part of the manufactory, although the two portions of the property were separated by a road over which a stranger had a right of way.

S. 92
applies to
tunnel.

The Lands Clauses Act, 1845, does not empower the promoters of the undertaking to compel an owner to create an easement over his land; and where part of a house or other building or manufactory is tunnelled under or arched over, the company must, under section 92, take the whole (*a*), unless express provision to the contrary is inserted in the special Act. This principle is not affected by the decision in *Great Western Rail. Co. v. Swindon, &c. Rail. Co.* (*b*).

Time at which
s. 92
applies.

The time at which it is to be determined whether any lands are part of a house or other building or manufactory is the time of giving the notice to treat, and apart from *mala fides* it is immaterial when or how the state in which lands are at the moment of giving the notice to treat has been brought about (*c*).

Counter-
notice.

When the promoters of the undertaking give a notice to treat for lands which are part of a house or other building or manufactory, the owner, if desirous to avail himself of the provisions in section 92, should give a counter-notice that he is willing and able to sell and convey the whole, and that he requires the promoters to

(*x*) (1855), 1 Jur. N. S. 790.

(*y*) (1868), L. R. 6 Eq. 473.

(*z*) (1852), 21 L. J. Ch. 731.

(*a*) *Falkner v. Somerset and Dorset Rail. Co.* (1873), L. R. 16 Eq. 458; 42 L. J. Ch. 851; *Pinchin v. London and Blackwall Rail. Co.* (1855), 24 L. J. Ch. 417; *Furniss v. Midland Rail. Co.* (1868), L. R. 6 Eq. 473.

(*b*) (1884), 9 App. Cas. 787; 53 L. J. Ch. 1075.

(*c*) *Richards v. Swansea Improvement and Tramways Co.* (1878), 9 Ch. D. 425.

take the whole (*d*). If, after such a counter-notice has been given, the promoters proceed to put in force their compulsory powers for the purpose of taking such lands only as are comprised in the notice to treat, the owner is entitled to apply for an injunction to restrain them, and on the hearing of the application for such injunction the question will be decided, whether the notice to treat includes lands which are "part of a house or other building or manufactory" (*e*).

The counter-notice (*f*), requiring the company to take the whole of any house or other building or manufactory, is not required to be in any particular form. It may be verbal (*g*), and where there had been no laches the filing of a bill was held to be in itself a sufficient counter-notice (*h*). It is sufficient for the owner to give notice by any method of description which accurately specifies the premises, the whole of which he requires to be taken (*i*).

Form of
counter-
notice.

It is not competent for an owner to require any portion less than the whole to be taken. The words in the 92nd section are "the whole thereof," and they are discussed in *Pulling v. London, Chatham & Dover Rail. Co.* (*k*). Turner, L. J., says: "I do not think that, in cases of this nature, a plaintiff can be entitled to insist that some portion of his property shall be taken, as part of his house, and that another portion of it, which is precisely in the same position, shall not be so taken. To hold this would be, in some cases, to enable a plaintiff to retain what is valuable, and throw upon railway companies what may be of little or no value. The Court, and not the plaintiff, must decide what is part of the house." If the counter-notice comprises land which the company is not bound to take it is bad, and the promoters are at liberty to proceed under the notice to treat (*l*). The acceptance of a bad

Owner cannot
require less
than whole to
be taken.

(*d*) The fact that there has been an agreed apportionment of rent after a summons has been issued under sect. 119 does not affect this right: *Lavers v. L. C. C.* (1905), 93 L. T. 233.

(*e*) *King v. Wycombe Rail. Co.* (1860), 29 L. J. Ch. 462; *Richards v. Swansea Improvement and Tramways Co.* (1878), 9 Ch. D. 425; *Barnes v. Southsea Rail. Co.* (1884), 27 Ch. D. 536.

(*f*) Cf. Book II. p. 326.

(*g*) *Binney v. Hammersmith and City Rail. Co.* (1863), 8 L. T. 161.

(*h*) *Gardner v. Charing Cross Rail. Co.* (1862), 31 L. J. Ch. 181.

(*i*) *Richards v. Swansea Improvement and Tramways Co.* (1878), 9 Ch. D. 425; *Pollard v. Middlesex C. C.* (1906), 95 L. T. 870.

(*k*) (1864), 33 L. J. Ch. 505. Cf. *Wild v. Woolwich B. C.*, [1910] 1 Ch. 35 (under Michael Angelo Taylor's Act).

(*l*) *Harvie v. South Devon Rail. Co.* (1875), 32 L. T. 1; *Loosemore v. Tiverton, &c. Rail. Co.* (1882), 22 Ch. D. 25, *per* Fry, J., at p. 40; 52 L. J. Ch. 260.

counter-notice by their solicitors does not bind the company to take land which they are not otherwise compellable to take (*m*).

Time within which to give counter-notice.

The counter-notice may be given at any time before the company have begun to put their compulsory powers in motion (*n*), unless the owner has deprived himself of his right to give such counter-notice by conduct or delay (*o*); but in practice it is convenient to give it within twenty-one days after receiving notice to treat.

Promoters may abandon original notice.

The promoters of the undertaking may abandon a notice to treat given with the intention of taking part of a house or other building or manufactory, if the owner gives a counter-notice requiring them to take the whole (*p*). The effect of a counter-notice given under the 92nd section of the Lands Clauses Act, 1845, is not to destroy, but only to suspend the original notice to treat (*q*). It makes the original notice refer to the whole house or other building or manufactory, as soon as the promoters of the undertaking take some step which signifies their intention to take the whole, and no fresh notice under section 18 is necessary (*r*).

Counter-notice suspends original notice.

Time within which promoters can elect to take whole.

The promoters are not required to express an intention of taking the whole before the expiration of their compulsory powers; but they should do so within a reasonable time. In such a case the 21st section of the Lands Clauses Act, 1845, does not apply, and the promoters are not bound to give the owner twenty-one days before proceeding to summon a jury; but they must give the owner an opportunity of agreeing as to terms, before putting in force the compulsory powers for the assessment of the value of his interest in the lands in question (*r*).

What is an election to take the whole.

In *Grierson v. Cheshire Lines Committee* (*s*), it was held that the notice of intention to apply to the Board of Trade for the appointment of a surveyor to determine the value of the premises comprised in the notice to treat, and of the further lands and

(*m*) *Treadwell v. London and S. Western Rail. Co.* (1884), 54 L. J. Ch. 565.

(*n*) *Gardner v. Charing Cross Rail. Co.* (1862), 31 L. J. Ch. 181; *Spackman v. Great Western Rail. Co.* (1855), 1 Jur. N. S. 790.

(*o*) *Barker v. North Staffordshire Rail. Co.* (1848), 2 De G. & S. 55; but see *Lavers v. L. C. C.* (1905), 93 L. T. 233.

(*p*) *King v. Wycombe Rail. Co.* (1860), 29 L. J. Ch. 462; *R. v. London and South Western Rail. Co.* (1848), 12 Q. B. 775; *Thompson v. Tottenham and Forest Gate Rail. Co.* (1892), 67 L. T. 416; *Ashton Vale Iron Co. v. Mayor, &c. of Bristol*, [1901] 1 Ch. 591; 70 L. J. Ch. 230; cf. *Wild v. Woolwich B. C.*, [1910] 1 Ch. 35 (under Michael Angelo Taylor's Act).

(*q*) *Pinchin v. London and Blackwall Rail. Co.* (1855), 24 L. J. Ch. 417.

(*r*) *Schwinge v. London and Blackwall Rail. Co.* (1855), 24 L. J. Ch. 405.

(*s*) (1874), L. R. 19 Eq. 83; 44 L. J. Ch. 35.

hereditaments which the plaintiffs could lawfully require, and had required the promoters to purchase and take, was not a step signifying the assent of the promoters to take a whole manufactory, or which prevented them from withdrawing their original notice on receiving from the owners a counter-notice requiring them to take the whole.

In *Marson v. London, Chatham & Dover Rail. Co.* (t), it was held that entry into possession of lands, after receiving a counter-notice requiring the whole of a house to be taken, is a step which binds the promoters to take the whole, and from which they cannot withdraw; and a declaration was made that the promoters were bound to purchase the whole in conformity with the 92nd section of the Lands Clauses Act, 1845. This declaration was enforced by an order made on further consideration, compelling the promoters forthwith to take all necessary and proper proceedings under the Lands Clauses Act, for the purpose of ascertaining the amount to be paid by them as the value of the premises (u).

In numerous special Acts a provision has been introduced limiting the operation of section 92 (x). In these cases it is usually provided that where parts only of the premises are required for the purposes of the Act, and such parts can in the opinion of the assessing tribunal be severed from the remainder without material detriment thereto, the owners may be required to sell and convey to the promoters the portions only of the premises so required without the promoters being obliged or compellable to purchase the whole or any greater portion thereof, the promoters paying for any portions required by them and making compensation for severance. If a company acting within their powers undertake to provide access to the remainder of the premises by means of a right of way over the portion taken, the arbitrator is entitled, in determining whether there will be material detriment to the remainder of the property arising from the taking of a portion, to take into consideration the sufficiency of the access which the company propose to provide, so long as the provision of such access is not inconsistent with the purposes for which the land is

Limitations
of s. 92 in
special Acts.

(t) (1868), L. R. 6 Eq. 101; 37 L. J. Ch. 483.

(u) *Marson v. London, Chatham & Dover Rail. Co.* (1869), L. R. 7 Eq. 546; 38 L. J. Ch. 371. The form of order (at p. 549) was followed in *Falkner v. Somerset and Dorset Rail. Co.* (1873), L. R. 16 Eq. 458; 42 L. J. Ch. 851.

(x) As to the provisions of Michael Angelo Taylor's Act (57 Geo. 3, c. xxix.), *vide post*, p. 350.

taken (*y*). This principle was discussed in a Scottish case in the House of Lords, but it was held that the decision of the oversman, whether right or wrong, in declining to take an offer by the company into consideration was final and not open to review (*z*).

Where the provisions of a Tramways and Improvements Act authorized the promoters to take "the forecourt" only of a chapel without being compellable to purchase the whole, provided that the section in question did not entitle the promoters to take or interfere with the main structure, it was held that the proposed operations of the promoters would interfere with the main structure, and that consequently they were not entitled to take "the forecourt" only (*a*).

2. Certain small pieces of intersected lands must be taken.

2. Section 93 of the Lands Clauses Act, 1845, enacts :—" If any lands, not being situate in a town or built upon, shall be so cut through and divided by the works as to leave, either on both sides or on one side thereof, a less quantity of land than half a statute acre, and if the owner of such small parcel of land require the promoters of the undertaking to purchase the same along with the other land required for the purposes of the special Act, the promoters of the undertaking shall purchase the same accordingly, unless the owner thereof have other land adjoining to that so left into which the same can be thrown, so as to be conveniently occupied therewith ; and if such owner have any other land so adjoining, the promoters of the undertaking shall, if so required by the owner, at their own expense, throw the piece of land so left into such adjoining land, by removing the fences and levelling the sites thereof, and by soiling the same in a sufficient and workmanlike manner."

"Town" and "built upon."

The words "town" and "built upon" in this section have the same meaning as in section 128 (*b*). In *London & South Western Rail. Co. v. Blackmore (c)*, Lord Hatherley, L. C., says : "The definition amounts to this,—that where there is such an amount of continuous occupancy of the ground by houses that persons may be said to be living, as it were, in the same town or place continuously,

(*y*) *In re Gonty and Manchester, Sheffield and Lincolnshire Rail. Co.*, [1896] 2 Q. B. 439; 65 L. J. Q. B. 625; cf. *South Eastern Rail. Co. v. Associated Portland Cement Manufacturers* (1900), *Ltd.*, [1910] 1 Ch. 12.

(*z*) *Caledonian Rail. Co. v. Turcan*, [1898] A. C. 256; 67 L. J. P. C. 69.

(*a*) *Genders v. L. C. C.*, [1915] 1 Ch. 1.

(*b*) *Vide post*, p. 312.

(*c*) (1870), L. R. 4 H. L. 610; 39 L. J. Ch. 713; *Donaldson v. Mayor, &c. of South Shields* (1899), 68 L. J. Ch. 162.

for the purposes of the railway Acts, and according to the popular sense of the word, and not the legal sense, which would not give at all a sensible definition—the place may be said to be a town” (*d*). The words “built upon” apply to lands which, though not in a town or part of a town, are covered with continuous buildings in the same way as lands in a town, and do not apply to lands in the open country which happen to have a building upon them (*e*).

PART III.—REMEDIES WHERE LANDS WRONGFULLY TAKEN.

The remedy, where a company are proceeding to take lands over which their powers do not extend, is by an action for a declaration and an injunction (*f*). In *Galloway v. Mayor and Commonalty of London* (*g*), Lord Cranworth, L. C., says: “It has become a well-settled head of equity, that any company authorized by the legislature to take compulsorily the land of another for a definite object, will, if attempting to take it for any other object, be restrained by the injunction of the Court of Chancery from so doing.”

Injunction
against com-
pany taking
lands *ultra*
vires.

There are three classes of plaintiffs who are entitled to ask for an injunction.

Three classes
of plaintiffs.

(a) The owner of the lands which are proposed to be taken (*h*), in which case it is not necessary to join the Attorney-General (*i*).

(b) Any individual member of a corporation can take proceedings, either in his own name or as representing all other members of the corporation except the defendants, to restrain acts which are *ultra vires* (*k*). And in *Cohen v. Wilkinson* (*l*), a company was

(*d*) *R. v. Cottle* (1851), 16 Q. B. 412; 20 L. J. M. C. 162; *Elliot v. South Devon Rail. Co.* (1848), 17 L. J. Ex. 262; *Carington v. Wycombe Rail. Co* (1868), L. R. 3 Ch. 377; 37 L. J. Ch. 213.

(*e*) *Carington v. Wycombe Rail. Co.* (1868), L. R. 3 Ch. 377; 37 L. J. Ch. 213; *Falkner v. Somerset and Dorset Rail. Co.* (1873), L. R. 16 Eq. 458; 42 L. J. Ch. 851.

(*f*) *Genders v. L. C. C.*, [1915] 1 Ch. 1.

(*g*) (1866), L. R. 1 H. L. 34, 43; 35 L. J. Ch. 477.

(*h*) *Lee v. Milner* (1837), 2 M. & W. 824, *per* Alderson, B.; *Ware v. Regent's Canal Co.* (1858), 28 L. J. Ch. 153; *Goodson v. Richardson* (1874), L. R. 9 Ch. 221; 43 L. J. Ch. 790; *Marriott v. East Grinstead Gas and Water Co.*, [1909] 1 Ch. 70.

(*i*) *Marriott v. East Grinstead Gas and Water Co.*, *supra*.

(*k*) *Russell v. Wakefield Waterworks Co.* (1875), L. R. 20 Eq. 474; 44 L. J. Ch. 496; *Simpson v. Westminster Palace Hotel Co.* (1860), 8 H. L. C. 712.

(*l*) (1849), 18 L. J. Ch. 378.

restrained at the suit of a shareholder from taking lands for purposes other than those authorized by the special Act.

(c) Where public interests are affected by a company acting *ultra vires*, the Attorney-General, acting on behalf of the public, is entitled to apply for an injunction (*m*); but no reported case has been found in which the Attorney-General has so applied to restrain a company from proceeding to take lands over which their powers do not extend (*n*).

A mere interest, as one of the public, does not give any private person a right to obtain an injunction against a company acting *ultra vires* (*o*).

(*m*) *Att.-Gen. v. Great Northern Rail. Co.* (1850), 15 Jur. 387; *Att.-Gen. v. Great Northern Rail. Co.* (1860), 2 L. T. 653; *Ware v. Regent's Canal Co.* (1858), 28 L. J. Ch. 153; cf. *Bonner v. Great Western Rail. Co.* (1883), 24 Ch. D. 1.

(*n*) See *Att.-Gen. v. Barry Docks and Rail. Co.* (1887), 35 Ch. D. 573; 56 L. J. Ch. 1018, where the information sought *inter alia* to restrain the company from an encroachment; cf. *Att.-Gen. v. Widnes Rail. Co.* (1874), 30 L. T. 449; *Putney Overseers v. London and South Western Rail. Co.*, [1891] 1 Q. B. 440, 442, *per* Bowen, L. J.; 60 L. J. Q. B. 438.

(*o*) *Mayor, &c. of Liverpool v. Chorley Waterworks Co.* (1852), 2 De G. M. & G. 852; cf. *Bonner v. Great Western Rail. Co.* (1883), 24 Ch. D. 1.

CHAPTER IV

PROMOTERS AND OWNERS.

THE authority to purchase or take lands is given to the persons empowered by the special Act to execute the works or undertaking for which they are required. Promoters of the undertaking.

Section 2 of the Lands Clauses Act, 1845, denominates such persons as "promoters of the undertaking," and defines this term to mean "the parties, whether company, undertakers, commissioners, trustees, corporations, or private persons, by the special Act empowered to execute works or undertakings, of whatever nature, which shall by the special Act be authorized to be executed." The Commissioners of Works and Public Buildings are included in this definition (*a*), and it is wide enough to embrace every case which in practice would arise (*b*). S. 2, L. Cl. Act, 1845.

The persons authorized, or who can be compelled to sell and convey lands to the promoters of the undertaking, are in the Lands Clauses Act, 1845, denominated "owners." Section 3 defines the term "owner" :—"Where under the provisions of this or the special Act, or any Act incorporated therewith, any notice shall be required to be given to the owner of any lands, or where any act shall be authorized or required to be done with the consent of any such owner, the word 'owner' shall be understood to mean any person or corporation who, under the provisions of this or the special Act, would be able to sell and convey lands to the promoters of the undertaking" (*c*). Owners.
S. 3, L. Cl. Act, 1845.

Section 7 completes the definition of owner, by describing what persons or corporations are enabled to sell and convey lands to the promoters of the undertaking. It is the general intention of this section to give every class of persons and corporations the power to sell and convey, since an omission might render the completion of S. 7, L. Cl. Act, 1845.

(*a*) *In re Edmeade* (1860), 6 Jur. N. S. 986.

(*b*) Cf. s. 133 and cases thereon (*post*, p. 300); Lands Clauses Act, 1860, ss. 6, 7; Municipal Corporations Act, 1882, ss. 5, 107. As to the scope of the Acquisition of Land (Assessment of Compensation) Act, 1919, *vide post*, p. 319.

(*c*) These words include a mortgagee with a power of sale: *R. v. Middlesex (Clerk of the Peace)*, [1914] 3 K. B. 259.

an undertaking impossible, except through a fresh application to Parliament.

Section 7 commences with a general power enabling all parties to sell and convey any lands, or any interest in lands, of which they are possessed, or to which they are entitled, to the promoters of the undertaking.

These general words do not include the Crown, whose rights are not affected without special mention by an Act of Parliament (*d*).

The section then particularizes certain parties :—

Corporations.

Corporations.—It was held, in *R. v. South Wales Rail. Co. (e)*, that a corporation, which was a railway company, was not enabled to sell the soil of the line of railway where the special Act contained no express powers of purchase, and where there was no authority to cross the line on the level. Where express powers are given by a special Act, it is immaterial that the corporation received no notice of the intention to apply to Parliament for them (*f*). In *In re Chelsea Waterworks Co. (g)*, it was held that, though the company had no power, under their own special Acts, to sell lands upon which their water pipes were laid, yet if a special Act authorized the compulsory taking of any of the company's land for the purpose of another undertaking the purchase-money might be paid to the company as absolute owners.

Tenants in tail or for life.

Tenants in tail or for life.—It was held in *In re Cuckfield Burial Board, Ex parte Earl of Abergavenny (h)*, that estates inalienably settled by Act of Parliament could be purchased or taken by the promoters, and that the tenant for life could bar his heirs in tail and all remaindermen, except the Crown, which is not bound by any Act of Parliament, without being named. An equitable tenant for life may contract for the sale of lands; but the trustees in whom the legal estate is vested are necessary parties to the conveyance (*i*).

A tenant for life by selling under the provisions of the Lands Clauses Act becomes entitled to have the costs of re-investment

(*d*) *In re Cuckfield Burial Board, Ex parte Earl of Abergavenny* (1855), 24 L. J. Ch. 585; cf. *Ex parte Revere* (1883), 24 Ch. D. 253; 52 L. J. Ch. 912.

(*e*) (1850), 19 L. J. Q. B. 272.

(*f*) *Regent's Canal, &c. Co. v. London School Board*, (1885) W. N. 4.

(*g*) (1887), 56 L. J. Ch. 640.

(*h*) (1855), 24 L. J. Ch. 585.

(*i*) *Lippincott v. Smyth* (1860), 29 L. J. Ch. 520.

paid by the promoters, whereas if he had sold under the Settled Land Acts the costs would have fallen on the trust funds (*k*).

Married women seised in their own right or entitled to dower (*l*).—In *Cooper v. Gostling* (*m*), it was held that where lands had been devised to A. for life, with remainder to a husband and wife, their heirs and assigns, for ever, the wife was in the position of a woman seised in her own right. The trustee of a married woman absolutely entitled to her separate use cannot sell and make a title to bind the *cestui que trust*, and there is no distinction between her position and that of a man (*n*). Married women.

Guardians and committees of lunatics and idiots.—Section 7 does not empower committees of lunatics and idiots to enter into an agreement to sell lands of a lunatic or idiot without the consent of the Lord Chancellor (*o*) ; but where a lunatic (whether so found or not) is seised in fee simple, a master can by order authorize the committee or *quasi*-committee of his estate to sell any property of the lunatic (*p*). A similar principle was applied in *Tink v. Rundle* (*q*), where it was held that the company, before proceeding under section 81 of the Lands Clauses Act, 1845, to enter on lands in possession of a receiver appointed by the Court of Chancery, must get leave of the Court. Guardians and committees.

Section 7 does not authorize a person of unsound mind, not so found, to sell land to the promoters (*r*). But in the case referred to a corporation had taken the land, and the only question raised was, whether the price which had been paid into Court retained the character of realty and belonged to the heir. It was decided that the fund in Court must be transferred to the heir.

In the event of promoters requiring to take lands, where a lunatic

(*k*) *In re Bentinck and London and North Western Rail. Co.* (1895), 12 Times L. R. 100.

(*l*) *In re Hall's Estate* (1870), L. R. 9 Eq. 179; 39 L. J. Ch. 392.

(*m*) (1863), 9 L. T. 77.

(*n*) *Peters v. Lewes and East Grinstead Rail. Co.* (1881), 18 Ch. D. 429, 437; 50 L. J. Ch. 839.

(*o*) *Re Taylor* (1849), 1 Macn. & G. 210; *Re Wade* (1849), 1 H. & Tw. 202; *Re Brown* (1849), 1 Macn. & G. 201.

(*p*) Lunacy Act, 1890 (53 & 54 Vict. c. 5), s. 120 (a); Lunacy Act, 1908 (8 Edw. VII. c. 47), s. 1.

(*q*) (1849), 10 Beav. 318; cf. *Re Taylor* (1849), 1 Macn. & G. 210.

(*r*) *In re Tugwell* (1884), 27 Ch. D. 309; 53 L. J. Ch. 1006; and see Lunacy Act, 1908 (8 Edw. VII. c. 47), s. 1.

is tenant for life, the sale may be effected by the committee of a lunatic so found with the leave of a master (*r*), and by the *quasi*-committee of a lunatic not so found under an order of the master (*s*).

Trustees.

Trustees or feoffees in trust for charitable or other purposes, executors or administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession, or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest.—These general words are intended to authorize a trustee to convey when the *cestui que trust* is under disability and cannot himself convey; but they do not empower a bare trustee for an absolute owner to sell and convey so as to bind a *cestui que trust*, who is not under any disability. A married woman having the property settled to her separate use is in the position of a *cestui que trust* not under disability, and her trustee cannot, under this section, give a valid conveyance to bind her interest in the lands. The promoters, unless the *cestui que trust* is under some disability, must treat with the beneficial owner, and cannot disregard him by negotiating solely with his trustee (*t*).

The trustees of a charity have power to make a valid alienation of the charity lands if they bring themselves within the provisions and restrictions of the Lands Clauses Acts; but unless these are followed all necessary outside assents must be obtained (*u*).

Where a trustee has a power of sale, he can exercise such power by agreement in favour of promoters; but a sale of this character is a sale under the powers of the trust, and not under the provisions of the Lands Clauses Acts (*x*). In all cases in which it is sought

(*r*) *Re Taylor, supra*; Lunacy Act, 1891 (54 & 55 Vict. c. 65), s. 27, and Rules thereunder.

(*s*) *In re Tugwell* (1884), 27 Ch. D. 309; 53 L. J. Ch. 1006; and see Lunacy Act, 1908 (8 Edw. VII. c. 47), s. 1.

(*t*) *Peters v. Lewes and East Grinstead Rail. Co.* (1881), 18 Ch. D. 429; 50 L. J. Ch. 839.

(*u*) *Governors of St. Thomas' Hospital v. Charing Cross Rail. Co.* (1861), 30 L. J. Ch. 395; *In re Clergy Orphan Corporation*, [1894] 3 Ch. 145; 64 L. J. Ch. 66; *In re Mason's Orphanage and London and North Western Rail. Co.*, [1896] 1 Ch. 596; 65 L. J. Ch. 439.

(*x*) *In re Pigott and Great Western Rail. Co.* (1881), 18 Ch. D. 146; 50 L. J. Ch. 679; *Peters v. Lewes and East Grinstead Rail. Co.* (1881), 18 Ch. D. 429; 50 L. J. Ch. 839; *Finnis and Young to Forbes and Pochin* (No. 1) (1883), 24 Ch. D. 587; *In re Lord Sudeley and Baines & Co.*, [1894] 1 Ch. 334; 63 L. J. Ch. 194; *In re Dyson and Fowke*, [1896] 2 Ch. 720.

to acquire lands under the powers of the Lands Clauses Acts, it is necessary to treat with the beneficial owner, unless such owner is under a disability.

The infant devisee of an owner who has agreed to sell lands was held to be a trustee under the Trustee Act, 1850, and was ordered to execute a conveyance on payment of the purchase-money (*y*).

The expression "executors or administrators" is restricted to executors or administrators who are seised of, possessed of or entitled to any land or any estate or interest therein (*z*).

Section 7 of the Lands Clauses Act, 1845, though it enables parties, who would, but for its provisions, be under disabilities, to sell and convey lands, does not introduce any alteration into those principles of law which decide in what parties the estate or interest in any lands is vested. A trustee with an absolute power of sale could give a good title; but an equitable tenant for life cannot convey without joining trustees in whom the legal estate is vested (*a*); and the trustee of a settlement of a married woman should be joined in the conveyance of any of the settled property (*b*). Where trustees have no estate in settled lands, but a bare power of sale, with the consent of the tenant for life, and the tenant for life refuses to give his consent, and is treated as an unwilling vendor, the company obtain their title under the powers of the Lands Clauses Act, 1845, and cannot call upon the trustees to convey under their power of sale (*c*).

S. 7 does not alter parties to be joined in a conveyance.

The second part of section 7 enables all parties who are empowered in the first part to sell and convey lands (with the exception of married women entitled to dower, or lessees for life, or for lives and years, or for years, or for any less interest), to sell and convey not only on behalf of themselves and their respective heirs, executors, administrators, and successors, but also for and on behalf of every person entitled in reversion, remainder, or expectancy after them, or in defeasance of the estates of such parties; and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians, on behalf of their

Owners empowered to represent interests in reversion.

(*y*) *In re Lowry's Will* (1872), L. R. 15 Eq. 78; 42 L. J. Ch. 509.

(*z*) *In re Barrow-in-Furness Corporation and Rawlinson*, [1903] 1 Ch. 339; 72 L. J. Ch. 233.

(*a*) *Lippincott v. Smyth* (1860), 29 L. J. Ch. 520.

(*b*) *Hall v. London, Chatham and Dover Rail. Co.* (1868), 14 L. T. 351.

(*c*) *In re Pigott and Great Western Rail. Co.* (1881), 18 Ch. D. 146; 50 L. J. Ch. 679.

wards, and as to such committees, on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics, and idiots respectively could have exercised the same power under the authority of the Lands Clauses Act, 1845, or the special Act, if they had respectively been under no disability, and as to such trustees, executors, and administrators, on behalf of their *cestuis que trustent*, whether infants, issue unborn, lunatics, *femes covert*, or other persons, and that to the same extent as such *cestuis que trustent* respectively could have exercised the same powers under the authority of the Lands Clauses Act, 1845, and the special Act, if they had respectively been under no disability.

The exception of lessees is of great practical importance since in many cases the interest purchased is a leasehold, and every lessee or sub-lessee must be separately represented (*d*).

Purchase for
extraordinary
purposes from
owners under
disability.

Section 14 of the Lands Clauses Act, 1845, restricts the powers of the promoters to purchase lands for extraordinary purposes from persons under disability. They cannot purchase more than the quantity prescribed by the special Act; and, in the event of the promoters selling the whole or any part of the land so purchased, it is not lawful for the persons under disability to sell the promoters other lands in lieu of the lands so sold or disposed of (*e*).

Absent
owners.

Sections 58—62, 64—67, of the Lands Clauses Act, 1845, provide for cases in which the owner is absent from the United Kingdom, or cannot, after diligent inquiry, be found (*f*).

Interests not
purchased by
mistake.

Sections 124—126 deal with interests in lands which have by mistake been omitted to be purchased (*g*).

(*d*) *Abrahams v. Mayor of London* (1868), L. R. 6 Eq. 625; 37 L. J. Ch. 732; *Brandon v. Brandon* (1864), 34 L. J. Ch. 333; *Re Chilworth Gunpowder Co. and Manchester Ship Canal Co.* (1891), 8 Times L. R. 79. See also *post*, p. 77.

(*e*) *Vide post*, p. 57.

(*f*) *Vide post*, pp. 174, 186.

(*g*) *Vide post*, p. 68.

CHAPTER V.

PURCHASE OF LANDS BY AGREEMENT.

SUBJECT to the special provisions and exceptions which are referred to in this Chapter, the promoters can purchase lands by agreement from all owners having any estate or interest therein, or from those owners who, by the Lands Clauses Acts, are enabled to sell and convey not only their own estate or interest, but also estates and interests in reversion, remainder, or expectancy (*a*).

An agreement to purchase and take lands, in order to be enforceable, must be in a legal form.

Such agreement may be made in the form prescribed in section 97 of the Companies Clauses Act, 1845, which is incorporated in special Acts authorizing the execution of works of a public nature, except so far as any of its provisions are expressly excluded. Section 97 enacts: "With respect to any contract which, if made between private persons, would be by law required to be in writing and under seal, such committee or the directors may make such contract on behalf of the company in writing, and under the common seal of the company, and in the same manner may vary or discharge the same.

Forms in which agreement can be made.

Under S. 97, C. Cl. Act, 1845.

"With respect to any contract which, if made between private persons, would be by law required to be in writing, and signed by the parties to be charged therewith, then such committee or the directors may make such contract on behalf of the company in writing, signed by such committee or any two of them, or any two of the directors, and in the same manner may vary or discharge the same.

"With respect to any contract which, if made between private persons, would by law be valid, although made by parol only, and not reduced into writing, such committee or the directors may

(*a*) As to the contractual powers of companies and corporations, reference should be made to text-books dealing with those subjects for a fuller exposition of the law.

make such contract on behalf of the company by parol only, without writing, and in the same manner may vary or discharge the same" (b).

Otherwise
under seal.

If the form prescribed in section 97 is not followed, then the promoters, if a corporation, must contract under seal. In *Finlay v. Bristol and Exeter Rail. Co.* (c), Parke, B., says: "As a general rule, a corporation cannot contract for an interest in lands, except by an instrument under seal."

Contract
by urban
sanitary
authority.

And under section 174 of the Public Health Act, 1875, an urban authority must contract in writing and under seal in the case of every contract of which the value or amount exceeds 50*l.* (d). An owner cannot bring an action for specific performance against a corporation unless the contract of purchase is under seal, nor should he give possession of his lands to a corporation until the purchase-money has been paid or deposited. Where a corporation is in possession of land, and refuses to pay or deposit the price, the owner has all the rights of an unpaid vendor.

If, however, there has been an adoption and part performance of a contract relating to an interest in land, such contract, though not under seal, may be enforced by or against a corporation (e). But this doctrine would not apply to an urban authority where the amount involved exceeds 50*l.* (f).

Appointment
of agent
should be
under seal.

If an agent is employed by a corporation to purchase an interest in lands, his appointment must be under the seal of the corporation; but if a corporation (other than an urban authority under the Public Health Acts) adopt and ratify the contract of their agent by part performance, they are bound, although his appointment is not under seal (g). The appointment of an agent to act for the

(b) *Jones v. Victoria Graving Dock Co.* (1877), 2 Q. B. D. 314; 46 L. J. Q. B. 219; cf. Companies (Consolidation) Act, 1908 (8 Edw. VII. c. 69), s. 76.

(c) (1852), 21 L. J. Ex. 117.

(d) Cf. *Hunt v. Wimbledon Local Board* (1878), 4 C. P. D. 48; 48 L. J. C. P. 207; *Young v. Mayor, &c. of Leamington* (1883), 8 App. Cas. 517; 52 L. J. Q. B. 713; *Baker v. Holme Cultram U. C.* (1915), 85 L. J. K. B. 799.

(e) *Wilson v. West Hartlepool Rail. Co.* (1865), 34 L. J. Ch. 241; *Gregory v. Mighell* (1811), 18 Ves. 328; *Crook v. Corporation of Seaford* (1871), L. R. 6 Ch. 551; *Laird v. Birkenhead Rail. Co.* (1859), 29 L. J. Ch. 218; *Hoare & Co., Ltd. v. Lewisham Corporation* (1902), 18 T. L. R. 816.

(f) Public Health Act, 1875, s. 174.

(g) *London and Birmingham Rail. Co. v. Winter* (1840), Cr. & Ph. 57; *Wilson v. West Hartlepool Rail. Co.* (1865), 34 L. J. Ch. 241; *Smith v. Birmingham Gas Co.* (1834), 1 A. & E. 526.

directors and not for the company does not require to be under seal (*h*).

A company cannot by adoption or ratification obtain the benefit of a contract purporting to be made on its behalf before the company comes into existence (*i*). But in the case of railways constructed under the provisions of the Railways Construction Facilities Act, 1864, s. 30, it is specially provided that "contracts relative to the purchase or taking of lands for the railway entered into by the promoters before the incorporation of the company by the certificate (*k*) shall be as binding on the company as if they had been entered into by the company."

When a notice to treat has been given in accordance with the provisions of section 18 of the Lands Clauses Act, 1845, and the price is fixed, there is a valid contract for the purchase of an interest in lands between the promoters and an owner. The form of a valid notice to treat will be considered in dealing with lands taken under compulsory process (*l*), and such notice is here discussed only so far as it is an element in a contract to purchase by agreement.

Under L. Cl.
Act, 1845,
after notice
to treat.

A notice to treat is not in itself a contract, nor is it necessarily a step putting in force compulsory powers, but is an act of a neutral character, which, according to circumstances, may be followed either by an agreement or by the enforcement of compulsory process (*m*).

Effect of
notice to
treat.

A notice to treat creates a relation between owner and promoters, but does not constitute a contract of sale until the price has been agreed or ascertained under the provisions of the Lands Clauses Acts. The land remains the property of the owner at law and in equity, but the promoters or the owner have acquired the right to have the price ascertained (*n*) by the procedure indicated in the

(*h*) *Wilson v. West Hartlepool Rail. Co.* (1865), 34 L. J. Ch. 241.

(*i*) *Natal Land, &c. Co. v. Pauline, &c. Syndicate*, [1904] A. C. 120; 73 L. J. P. C. 22; *Kelner v. Baxter* (1866), L. R. 2 O. P. 174; 36 L. J. C. P. 94; *Shrewsbury (Earl of) v. North Staffordshire Rail. Co.* (1865), L. R. 1 Eq. 593; 35 L. J. Ch. 156.

(*k*) See ss. 6—29 of that Act.

(*l*) *Post*, p. 70.

(*m*) *Guest v. Poole and Bournemouth Rail. Co.* (1870), L. R. 5 C. P. 553; 39 L. J. C. P. 329; *In re Urbridge and Rickmansworth Rail. Co.* (1890), 43 Ch. D. 536; 59 L. J. Ch. 409.

(*n*) *Tiverton, &c. Rail. Co. v. Loosemore* (1884), 9 App. Cas. 480; 53 L. J. Ch. 812.

Lands Clauses Acts, and the owner may compel the settlement of the price either by justices, arbitration, or by jury (*o*).

Assessment
of price.

The jurisdiction of the justices is limited to claims not exceeding 50*l.* (*p*). If the owner desires to have the price settled by arbitration, he can initiate proceedings by giving notice to the promoters before they have issued their warrant to the sheriff to summon a jury (*q*). If assessment of price by a jury is desired, and the promoters do not issue a warrant, the owner can proceed by mandamus (*r*).

Notice to
treat is not a
contract.

Kindersley, V -C., in *Haynes v. Haynes* (*s*), said : " I consider that a notice to treat constitutes the relation of vendor and purchaser to a certain extent, and for certain purposes that some of the consequences flowing from an actual contract might also flow from a notice to treat. The particular lands are fixed ; neither party can get rid of the obligation, the one to take, the other to give up ; and such is the meaning to be attributed to those expressions which have dropped from different judges as to its being a contract, but to no further extent is it a contract on the part of the landowner ; but if the company and the landowner, after the notice, come to an agreement, that is an enforceable contract " (*t*).

The notice to treat, not being a contract between the promoters and an owner, does not require to be stamped as such (*u*) ; and it does not constitute a debt, owing or accruing, which can be attached under R. S. C., O. XLV. r. 1. (*x*).

Where price
is fixed,
contract is
complete.

A notice to treat and a settlement of price together constitute a complete and binding contract between the parties, and it is not necessary that the provisions of the Statute of Frauds should be complied with (*y*). Such contract can be enforced by either party

(*o*) *S. C.*, at p. 493 ; *Birmingham & Oxford Junction Rail. Co. v. R.* (1851), 15 Q. B. 647, n. ; 20 L. J. Q. B. 304.

(*p*) Lands Clauses Act, 1845, s. 22. *Vide post*, p. 177.

(*q*) Ss. 23, 25, 37 ; *post*, p. 185.

(*r*) Ss. 38—57 ; *post*, p. 206.

(*s*) (1861), 30 L. J. Ch. 578.

(*t*) *Gardner v. Charing Cross Rail. Co.* (1862), 31 L. J. Ch. 181 ; *Ex parte Arnold* (1863), 8 L. T. 623 ; *Righton v. Righton* (1867), 36 L. J. Ch. 61.

(*u*) *Rawlings v. Metropolitan Rail. Co.* (1868), 37 L. J. Ch. 824.

(*x*) *Richardson v. Elmit* (1876), 2 C. P. D. 9, decided on the corresponding provisions of R. S. C. 1875, O. XLV. r. 2.

(*y*) *Watts v. Watts* (1874), L. R. 17 Eq. 217 ; 43 L. J. Ch. 77 ; *Ex parte Hawkins* (1843), 13 Sim. 569 ; *Re Woolton's Trusts* (1863), 7 L. T. 620 ; but there must be an agreement binding the parties : *Pollard v. Middlesex C. C.* (1906), 95 L. T. 870.

in the ordinary way by an action for specific performance (z), including an obligation to accept an assignment containing the usual covenants (a). In *Cooper v. Metropolitan Board of Works* the Metropolitan Board of Works had agreed to settle a compensation claim on the basis of paying 150*l.* for the claimant's interest in a lease, and 250*l.* for damage to his trade as a tailor. The claimant could not produce his lease, which was in the hands of his mortgagee, and the Board paid the 400*l.* into Court under section 76. It was held, nevertheless, that the claimant was entitled to specific performance of the agreement, and to payment of the sum of 250*l.*, on the ground that this sum was compensation agreed to be paid for personal skill, to which no mortgagee could make a valid claim, and was not part of the goodwill of trade premises such as would pass to the mortgagee (b).

The Lands Clauses Act, 1845, s. 7, enables promoters to purchase lands from owners who but for its provisions would be under disability, and enables owners to sell and convey not only their own interests in lands, but also interests in reversion, remainder, or expectancy (c). There are special enactments in the same Act which are inserted for the protection of owners who, but for its provisions, would be under disability, and for the protection of persons interested in reversion, remainder, or expectancy. These enactments are here considered, so far as they modify the rights of promoters to purchase by agreement.

Protection of
owners under
disabilities.

Section 9 (d) enacts that the purchase money to be paid for any lands to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands, except under the provisions of that or the special Act, shall not, except where the same shall have been determined by the verdict of a jury, or by arbitration, or by the valuation of a surveyor appointed by two justices under the provision thereafter con-

S. 9, L. Cl.
Act, 1845.

(z) *Regent's Canal Co. v. Ware* (1857), 26 L. J. Ch. 566.

(a) *Harding v. Metropolitan Rail. Co.* (1872), L. R. 7 Ch. 154; 41 L. J. Ch. 371 (as to which, see *Matthey v. Curling* (1922), 38 Times L. R. 475); *Mason v. Stokes Bay Pier and Rail. Co.* (1863), 32 L. J. Ch. 110; *Regent's Canal Co. v. Ware* (1857), 26 L. J. Ch. 566; *Righton v. Righton* (1867), 36 L. J. Ch. 61; *Bishop of Winchester v. Mid-Hants Rail. Co.* (1867), L. R. 5 Eq. 17; 37 L. J. Ch. 64; *In re Pigott and Great Western Rail. Co.* (1881), 18 Ch. D. 146; 50 L. J. Ch. 679.

(b) *Cooper v. Metropolitan Board of Works* (1883), 25 Ch. D. 472; 53 L. J. Ch. 109.

(c) *Ante*, p. 51.

(d) Cf. Book II., p. 332.

tained, be less than shall be determined by the valuation of two able practical surveyors to be appointed as is therein provided. The provisions of this section must be strictly complied with, and if the price has not been fixed in accordance with the regulations prescribed in this section, a claim by a railway company for specific performance of an agreement to purchase and sell lands will not be allowed (e). The surveyors must be regularly appointed, and must meet to consider whether or not the price is fair, and the declaration of the surveyors annexed to the valuation is a document of title for the protection of the promoters which cannot be dispensed with by them (e).

It is not competent for trustees acting on behalf of an owner under disability to appoint one of themselves as surveyor under section 9 (f).

In *Baker v. Metropolitan Rail. Co.* (g), the Court, at the instance of the owner, did direct, under special circumstances, an inquiry as to the sufficiency of price and specific performance of the agreement by the company, where, through the company's default, a surveyor had not been appointed in accordance with section 9. But the decision was, to all intents and purposes, reversed on appeal by Lord Westbury, L. C., who intimated that in order to enable the tenant for life to give a good statutory title, the Act of Parliament must be strictly pursued, and the matter was subsequently arranged (h).

If a company refuse to appoint a surveyor under section 9, the remedy is by an application for a mandamus to compel them to do so.

(e) *Bridgend Gas, &c. Co. v. Dunraven* (1886), 31 Ch. D. 219; 55 L. J. Ch. 91; *Peters v. Lewes and East Grinstead Rail. Co.* (1881), 18 Ch. D. 429; 50 L. J. Ch. 839. In *Wycombe Rail. Co. v. Donnington Hospital* (1866), L. R. 1 Ch. 268, the order dismissing the suit for specific performance, was drawn up in the following form: "It appearing to this Court that the price to be paid by the company in respect of the purchase in the bill mentioned has not been ascertained and settled in due conformity with the provisions of the Lands Clauses Consolidation Act, and that the agreement has not become final and complete, and ought not to be specifically performed, the Court doth order that the bill be dismissed without costs."

(f) *Peters v. Lewes and East Grinstead Rail. Co.* (1881), 18 Ch. D. 429; 50 L. J. Ch. 839.

(g) (1862), 32 L. J. Ch. 7.

(h) (1862), 31 Beav. 504, 511. Cf. *Bridgend Gas, &c. Co. v. Dunraven* (1886), 31 Ch. D. 219; 55 L. J. Ch. 91.

In *Ex parte Rector of Adderley* (*i*), it was held, that the provisions of section 9 as to valuation might be waived by the parties interested, where the question was not one of specific performance. A petition for investment of money was granted, the company not objecting, and the petitioner undertaking to produce an affidavit by his surveyor of the sufficiency of the price, although the provisions of section 9 had not been complied with. It must be noticed that, in this case, the Court of Chancery substituted for future interests a protection different from that enacted by the legislature, and the precedent is not one which will probably be followed. The case of *Bridgend Gas Co. v. Dunraven* (*k*), although in terms it deals only with specific performance, decides that the provisions of section 9 cannot be waived or dispensed with by the promoters, while it is clear that the owner under disability cannot waive them.

Waiver of
s. 9.

Section 15 makes it necessary for municipal corporations to get the approbation of the Ministry of Health (*l*) in cases where, apart from the special Act, they could not have sold without such approbation. In certain cases the consent of the Charity Commissioners to a sale by trustees of a charity is required by the Charitable Trusts Act, 1855 (18 & 19 Vict. c. 124), s. 29 (*m*).

S. 15, L. Cl.
Act, 1845.

An agreement for the purchase of any interest in lands entered into between the promoters and an owner, which is complete and definite in all its terms, and which is authorized by the special Act, will be enforced at the suit of either party by a decree of specific performance. Where a contract involves the execution of certain works in accordance with its provisions, specific performance will not ordinarily be decreed, on the principle that it is beyond the province of a court of law to superintend the manner in which such works are carried out. But where the promoters

Specific
performance
of agreement
to purchase
lands.

(*i*) (1864), 10 L. T. 131. Cf. *Dean and Chapter of Ely v. Peterborough, Wisbeach, &c. Rail. Co.*, (1869) W. N. 201.

(*k*) (1886), 31 Ch. D. 219; 55 L. J. Ch. 91.

(*l*) Originally the Treasury, now the Ministry of Health: Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 72; Ministry of Health Act, 1919 (9 & 10 Geo. 5, c. 21), s. 3; as to form of consent, see *Arnold v. Mayor, &c. of Gravesend* (1856), 25 L. J. Ch. 776.

(*m*) Cf. *Finnis and Young to Forbes and Pockin* (No. 1) (1883), 24 Ch. D. 587; *In re Clergy Orphan Corporation*, [1894] 3 Ch. 145; 64 L. J. Ch. 66; *In re Mason's Orphanage and London and North Western Rail. Co.*, [1896] 1 Ch. 596; 65 L. J. Ch. 439; *In re Leeds Grammar School*, [1901] 1 Ch. 228; 70 L. J. Ch. 89.

have agreed to provide accommodation or similar works for the convenience of an owner, as a part of the consideration for interference with his lands, the High Court will decree specific performance of the contract, and, where necessary, will order a reference to chambers for determining the exact nature of such works (*n*). Price is an essential part of a contract for the purchase of lands, and where it has been agreed that the price shall be fixed by arbitration, it must be so fixed before specific performance will be decreed (*o*). When an action has been commenced by promoters for specific performance of an agreement to purchase lands, the promoters are not entitled to possession of the land in dispute *pendente lite* unless they have taken the steps prescribed by section 76 or section 85 of the Lands Clauses Act, 1845 (*p*).

It is no objection to an action for specific performance that the price fixed includes not only the purchase-money for the lands, but also compensation for consequential damage to the other property of the owner (*q*). A contract which is not *ultra vires* will be enforced against a company, although the company have determined not to make the line for which the land was sold (*r*).

If promoters enter on lands without authority, remedy is by action and injunction.

Promoters who have not complied with the provisions authorizing entry on lands against the will of the owner, and who have neglected to purchase by agreement the interest of the owner, are liable as trespassers. An action for the recovery of such lands can be maintained against the promoters, and an injunction will be granted to restrain them from interfering with the possession of an owner who has been successful in such action (*s*).

Equitable mortgagee's remedies.

An equitable mortgagee who has not been treated with (*t*), but

(*n*) *Storer v. Great Western Rail. Co.* (1839), 2 Y. & C. (Ch.) 48; *Raphael v. Thames Valley Rail. Co.* (1867), L. R. 2 Ch. 147; 36 L. J. Ch. 209; *Sanderson v. Cockermouth Rail. Co.* (1850), 19 L. J. Ch. 503; *Lytton v. Great Northern Rail. Co.* (1855), 2 Jur. N. S. 436; cf. *South Eastern Rail. Co. v. Associated Portland Cement Manufacturers* (1900), Ltd., [1910] 1 Ch. 12.

(*o*) *Morgan v. Milman* (1852), 3 De G. M. & G. 24; *Milnes v. Gery* (1807), 14 Ves. 400.

(*p*) *Bygrave v. Metropolitan Board of Works* (1886), 32 Ch. D. 147; 55 L. J. Ch. 602.

(*q*) *Webb v. Direct London and Portsmouth Rail. Co.* (1851), 1 De G. M. & G. 521.

(*r*) *Eastern Counties Rail. Co. v. Hawkes* (1855), 24 L. J. Ch. 601.

(*s*) *Stretton v. Great Western and Brentford Rail. Co.* (1870), L. R. 5 Ch. 751; 40 L. J. Ch. 50; *Great Western Rail. Co. v. Swindon, &c. Rail. Co.* (1884), 9 App. Cas. 787; 53 L. J. Ch. 1075.

(*t*) See as to this, *Cooke v. London C. C.*, [1911] 1 Ch. 604, and *post*, p. 293.

of whose claims the promoters were cognizant, has, in relation to his security, all ordinary remedies, and is entitled, in default of payment, to an assignment of the land comprised in his security (*u*).

Promoters who have entered on lands under agreement, or in accordance with their powers, but who have failed to pay the purchase-money, are liable to the owners, who are not deprived of their rights as unpaid vendors, being in no different position from vendors of land to any other person.

Owners have remedies of an unpaid vendor.

There are two remedies open to an unpaid vendor: the one is to force a sale, and the other is to ask for rescission of the contract and for possession.

In *Walker v. Ware, &c. Co.* (*x*), a company had entered on lands in accordance with the provisions contained in section 85 of the Lands Clauses Act, 1845, but had failed to pay the purchase-money. Lord Romilly, M. R., held, that the plaintiff had a lien over the lands for his unpaid purchase-money, and that the Court of Chancery would enforce such lien by sale, although the railway had been made over the land, and was opened for public use, for the public have no rights as against the unpaid vendor (*y*). Land, when sold to enforce a lien for unpaid purchase-money, is freed and discharged from all claims of the company or the public (*z*).

Lien.

Where a lien has been declared in favour of an unpaid vendor against a railway company, and an order made for the sale of land, then, pending the sale, a receiver should be appointed with a direction to the company to give immediate possession, and an injunction against the use of the land should not be granted, because such injunction would make the land valueless to either party (*a*). But where an order had been made that the company should pay purchase-money and interest, with a declaration that

Enforcement of lien by sale, and appointment of a receiver.

(*u*) *Martin v. London, Chatham and Dover Rail. Co.* (1866), L. R. 1 Ch. 501; 35 L. J. Ch. 795.

(*x*) (1866), L. R. 1 Eq. 195; 35 L. J. Ch. 94; cf. *Wing v. Tottenham, &c. Rail. Co.* (1868), L. R. 3 Ch. 740; 37 L. J. Ch. 654; *Raper v. Crystal Palace, &c. Rail. Co.* (1868), 18 L. T. 8.

(*y*) Cf. *Williams v. Aylesbury, &c. Rail. Co.* (1873), 28 L. T. 547; *Williams v. Great Eastern Rail. Co.* (1868), 18 L. T. 458.

(*z*) *Munns v. Isle of Wight Rail. Co.* (1870), L. R. 5 Ch. 414; 39 L. J. Ch. 522.

(*a*) *S. C.*; *Lycett v. Stafford and Uttoxeter Rail. Co.* (1872), L. R. 13 Eq. 261; 41 L. J. Ch. 474; *Bishop of Winchester v. Mid-Hants Rail. Co.* (1867), L. R. 5 Eq. 17; 37 L. J. Ch. 64; cf. *Pell v. Northampton, &c. Rail. Co.* (1867), L. R. 2 Ch. 100; 36 L. J. Ch. 319.

the unpaid vendor was entitled to a lien on the lands in respect of the purchase-money, interest, and costs, and that in default of payment the unpaid vendor was to be at liberty to apply to enforce such lien, but there was no order for sale, the Court on default of payment, and on evidence that the land was unsaleable, granted an injunction to restrain the company from running trains over or from continuing in possession of the land (*b*).

Where an unpaid vendor of land taken by a railway company has commenced an action to enforce his lien, the Court will not grant an injunction or the appointment of a receiver against the company before judgment has been obtained in the action, even though the company admit their liability (*c*). James, L. J., points out in his judgment (*c*) the uselessness of appointing a receiver, except as a step in the procedure for the purpose of enforcing a lien already declared. Where the purchase-money has been ordered to be paid, but has not been declared to be a charge upon the land, the vendor is not entitled under the liberty to apply to enforce by petition a lien on the land for the sum due (*d*).

Power to sell
in considera-
tion of a rent-
charge.

Sections 10 and 11 of the Lands Clauses Act, 1845, of which the operation is extended by section 2 (*e*) of the Lands Clauses Act, 1860, so as to include persons under disability, authorize the sale of lands in consideration of an annual rent-charge, and make such rents a charge on the tolls or rates, if any, payable under the special Act. A rent reserved as the consideration before the sale of land in distinction from the payment of a sum in gross, is a rent-charge under sections 10 and 11 (*f*).

Owner of
rent-charge is
not in position
of an unpaid
vendor.

If such rents are not paid within thirty days, section 11 provides for their recovery by action or by distress of the goods and chattels of the promoters of the undertaking (*g*). The person to whom any such rent-charge is payable does not stand in the ordinary position of an unpaid vendor, and is not entitled to a declaration of lien in respect of arrears in payment of the rent-

(*b*) *Allgood v. Merrybent, &c. Rail. Co.* (1886), 33 Ch. D. 571; 55 L. J. Ch. 743.

(*c*) *Latimer v. Aylesbury and Buckingham Rail. Co.* (1878), 9 Ch. D. 385.

(*d*) *Att.-Gen. v. Sittingbourne and Sheerness Rail. Co.* (1865), L. R. 1 Eq. 636.

(*e*) *Post*, p. 436. S. 1 of the Act of 1860 has been repealed by the Statute Law Revision Act, 1875 (38 & 39 Vict. c. 66).

(*f*) *In re Lord Gerard and Beecham's Contract*, [1894] 3 Ch. 295; 63 L. J. Ch. 695.

(*g*) For the method of levying distress, see s. 138, *post*, p. 431.

charge (*h*). But where lands are sold to a railway company in consideration of a rent-charge, the parties may agree to its being secured by a power of re-entry until satisfaction of arrears, and such an agreement gives the owner of the rent-charge a right to enter against a receiver of the undertaking appointed by the High Court (*i*).

The owner of a rent-charge is entitled to payment of rent in priority to any other class of creditors, and the form of the order in *Eyton v. Denbigh, d.c. Rail. Co.* (*k*) is one which would generally be applicable. The declaration made was, "That the owners of the several rent-charges mentioned in the chief clerk's certificate are entitled to a charge upon all the lands of the company comprised in their several deeds of charge, and upon all the earnings and profits of the undertaking of the company, in priority to all other the creditors of the company, and that they are, as between themselves, entitled to be paid such rent-charges *pari passu*."

Form of order to enforce his remedies.

Where a scheme of arrangement has been filed under the Railway Companies Act, 1867, the Court has jurisdiction under section 7 of that Act to stay proceedings by unpaid landowners. This jurisdiction will not be exercised unless the scheme proposes some reasonable provision for the payment of a landowner's claims, and the railway company submits to a decree in his favour (*l*), nor in an action for specific performance, except upon the terms of the company submitting to a decree (*m*). But where a special Act restrained actions against a company by creditors, except with the leave of the Court, the Court refused leave where it was not shown that the company had the means of paying and did not pay (*n*). Where a landowner had obtained a declaration of lien, and was about to be put in possession, he was held entitled to object to a scheme involving the sale of the superfluous lands (*o*).

Scheme of arrangement.

Where a deposit has been made under the Standing Orders of

Abandonment.

(*h*) *Earl of Jersey v. Briton Ferry Floating Dock Co.* (1869), L. R. 7 Eq. 409.

(*i*) *In re Manchester and Milford Rail. Co.* (1880), 14 Ch. D. 645; 49 L. J. Ch. 454.

(*k*) (1868), L. R. 7 Eq. 439; 6 Eq. 14; 37 L. J. Ch. 669.

(*l*) *In re Cambrian Rail. Co.'s Scheme* (1868), L. R. 3 Ch. 278; *Griffith v. Cambrian Rail. Co.* (1869), 21 L. T. 290. Cf. *In re East and West India Dock Co.* (1890), 44 Ch. D. 38, 62.

(*m*) *Robertson v. Wrexham, Mold, &c. Rail. Co.* (1869), 17 W. R. 137.

(*n*) *In re Parry and Jones* (1869), 18 W. R. 416.

(*o*) *In re Somerset and Dorset Rail. Co.* (1870), 21 L. T. 656.

Parliament, and it is enacted that if the railway is not completed and opened by the time fixed, the deposit shall be applicable towards the compensation of landowners and other persons whose property has been interfered with, or who have been subjected to injury or loss in consequence of the compulsory powers of taking property conferred upon the promoters, the service of a notice to treat is not in itself an exercise of the compulsory powers of taking property, and an owner who has received a notice to treat is not entitled to priority in compensation out of the fund deposited (*p*). An Abandonment Act enacted that compensation should be made to the owners and occupiers, or other persons interested in land, for all injury or damage sustained by them respectively by reason of the purchase not being completed pursuant to a contract or notice. It was held that an owner on whom the company had served a notice to treat was entitled to claim as creditor in respect of any loss or damage that he might have sustained, either by reason of contracts entered into, or by reason of notice to treat, against the surplus of the fund deposited, *pari passu* with other creditors (*p*).

(*p*) *In re Uxbridge and Rickmansworth Rail. Co.* (1890), 43 Ch. D. 536; 59 L. J. Ch. 409; the questions arising on the abandonment of railways are dealt with more fully *post*, p. 383.

CHAPTER VI.

THE NOTICE TO TREAT.

SECTION 16 of the Lands Clauses Act, 1845, enacts that the whole of the capital of the undertaking shall be subscribed, before it is lawful to put into force any of the powers in relation to the compulsory taking of land for the purpose of the undertaking. But where, under the special clauses of an Act of Parliament, a company is prohibited from taking certain lands, but empowered to acquire over such lands a right in the nature of an easement, and any dispute is to be settled by a tribunal other than that prescribed in the Lands Clauses Act, 1845, section 16 of the Lands Clauses Act, 1845, does not apply, and an injunction to restrain the company from proceeding to acquire such easement, until the whole of the capital of the undertaking has been subscribed, will not be granted (a).

S. 16, L. Cl. Act, 1845.
Capital to be subscribed before compulsory powers.

Section 16 applies to the purchase and taking of land otherwise than by agreement, and there is a difference of opinion whether an entry on lands under section 85 is justified although the provisions of section 16 have not been complied with. The point is discussed by Lords Watson and Bramwell in *Great Western Rail. Co. v. Swindon, &c. Rail. Co.*, but the decision in that case apparently turned upon the terms of the special sections in the private Act, and there was some divergence of opinion (b).

Section 17 makes the certificate of two justices sufficient evidence that the whole capital is subscribed. In the absence of fraud, the certificate is conclusive against an owner that the provisions of section 16 have been complied with (c).

S. 17, L. Cl. Act, 1845.

The certificate of two justices is not a condition precedent to the putting compulsory powers in force, where this would be inconsistent with the provisions of the special Act. Such certificate is

Certificate not required if inconsistent with special Act.

(a) *Great Western Rail. Co. v. Swindon, &c. Rail. Co.* (1884), 9 App. Cas. 787; 53 L. J. Ch. 1075.

(b) *S. C.*, at pp. 803, 810.

(c) *Ystalyfera Iron Co. v. Neath and Brecon Rail. Co.* (1873), L. R. 17 Eq. 142; 43 L. J. Ch. 476.

not required in the case of a branch railway authorized to be made by an existing company (*d*).

Ss. 16 and 17 only apply to compulsory powers.

Sections 16 and 17 only apply where lands are purchased or taken under compulsory powers. They are a protection to owners and not to promoters; and being only applicable where it is intended to enforce compulsory powers, they cannot be set up as a defence against an owner who is willing to sell and convey his lands, but requires the value to be assessed by one of the methods prescribed in the Lands Clauses Act, 1845 (*e*).

Notice to treat not necessarily an exercise of compulsory powers.

The mere service of a notice to treat is not necessarily a step in compulsory procedure. The owner on whom such notice is served may be either a willing vendor, or determined not to part with his land except under compulsion; and until this is decided, a notice to treat is a neutral proceeding, which may or may not be followed by compulsory process (*f*).

In *Guest v. Poole and Bournemouth Rail. Co.* (*e*), a company, after having given a notice to treat, raised as a defence against an action by the owner for a mandamus to compel the issue of a warrant under section 29 of the Lands Clauses Act, 1845, that the capital had not been subscribed in accordance with the provisions of sections 16 and 17. It was held that this defence could not be maintained, and that sections 16 and 17 did not apply, since the owner was willing to convey, so soon as the price had been fixed in accordance with the provisions of the Lands Clauses Act, 1845, and the company were not putting in force their compulsory powers.

The case of *R. v. Ambergate, &c. Rail. Co.* (*g*), was decided after the judgment in *R. v. York and North Midland Rail. Co.* (*h*) had been given in the Queen's Bench, but before that judgment had been reversed in error; and, therefore, a mandamus, ordering a company to complete a line of railway, was on the face of it good. The answer to the mandamus by the company was, that the capital had not been subscribed and could not be procured. Judgment was given for the defendants, on the ground that the mandamus

(*d*) *R. v. Great Western Rail. Co.* (1852), 22 L. J. Q. B. 65; *Weld v. South Western Rail. Co.* (1864), 33 L. J. Ch. 142.

(*e*) *Guest v. Poole & Bournemouth Rail. Co.* (1870), L. R. 5 C. P. 553; 39 L. J. C. P. 329.

(*f*) See *In re Uxbridge and Rickmansworth Rail. Co.* (1890), 43 Ch. D. 536; 59 L. J. Ch. 409.

(*g*) (1853), 22 L. J. Q. B. 191.

(*h*) (1852), 22 L. J. Q. B. 41, 225.

in substance commanded the company to exercise compulsory powers, and therefore to do that which sections 16 and 17 of the Lands Clauses Act, 1845, declared to be illegal.

It is difficult to see how a case similar to that of *R. v. Ambergate, &c. Rail. Co.* could now arise, since it is a well recognised principle that when a company has been given powers in the ordinary form to make and maintain statutory works, this does not impose any obligation either to make or to maintain (*i*) : but the principles of interpretation of sections 16 and 17 are still applicable.

Where the requisite capital has been subscribed, and the promoters are desirous to put in force their compulsory powers for the purchase or taking of lands, the first step is to give a notice to treat or a notice of similar effect (*k*). In the case of compulsory taking, the right of entry under section 85 is a right not independent of, but consequent upon the landowner and the promoters being placed, by the notice to treat, in a position analogous to that of vendor and purchaser (*l*).

Notice to treat.

Until a notice to treat has been given, unless the omission arises from acquiescence of the owner, or from a *bonâ fide* mistake on the part of the promoters, or from their inability to serve the same, the promoters do not bring themselves within the protection of the special Act, and are liable to be proceeded against as persons interfering, or threatening to interfere, with private rights (*m*). Publication of the appointment of an arbitrator under the Railways (Ireland) Act, 1851, is equivalent to service of a notice to treat under the Lands Clauses Act, 1845 (*n*). The publication of the

Necessity of notice to treat.

What notices are equivalent to a notice to treat.

(*i*) *R. v. York and North Midland Rail. Co.* (1853), 22 L. J. Q. B. 225; *Edinburgh, Perth, &c. Rail. Co. v. Philip* (1857), 2 Macq. H. L. (Sc.) 574; *Scottish North Eastern Rail. Co. v. Stewart* (1859), 3 Macq. H. L. (Sc.) 382; *R. v. G. W. Rail. Co.* (1893), 62 L. J. Q. B. 572.

(*j*) S. 18, Lands Clauses Act, 1845.

(*l*) *Tiverton, &c. Rail. Co. v. Loosemore* (1884), 9 App. Cas. 480, at p. 503, per Lord Watson; 53 L. J. Ch. 812.

(*m*) *Stretton v. Great Western and Brentford Rail. Co.* (1870), L. R. 5 Ch. 751; 40 L. J. Ch. 50; *Ramsden v. Manchester, &c. Rail. Co.* (1848), 1 Ex. 723; *Ranken v. East and West India Docks, &c. Rail. Co.* (1850), 19 L. J. Ch. 153; *Perks v. Wycombe Rail. Co.* (1862), 10 W. R. 788; *Wood v. Charing Cross Rail. Co.* (1864), 33 Beav. 290; *Martin v. London, Chatham and Dover Rail. Co.* (1866), L. R. 1 Ch. 501; 35 L. J. Ch. 795; *University Life Assurance Co. v. Metropolitan Rail. Co.*, (1866) W. N. 167; *Thomas v. Barry Dock and Rail. Co.* (1889), 5 Times L. R. 360.

(*n*) *Re Doyne's Traverses* (1889), 24 L. R. Ir. 287.

requisition under section 6 (c) of the schedule to the Artizans and Labourers Dwellings Improvement Act, 1875, was held to have the same force as a notice to treat, and an owner affected by it cannot afterwards create a new interest (o). The Act of 1875 has been repealed, but there are similar provisions in the Housing of the Working Classes Act, 1890 (p). A notice of intention to take lands after the expiration of six months under a special Act, though not a notice to treat, was held to bind the promoters to proceed with the purchase of the premises within a reasonable time after the expiration of six months (q).

Not necessary
in case of
yearly
tenancies.

It is not necessary to serve a notice to treat where a tenant is required to give up possession under section 121 (r).

Acquiescence
of owner in
not receiving
notice.

If an owner, by acquiescence, waives his claim to a notice to treat, he cannot, in subsequent proceedings, take advantage of an irregularity which his own conduct has brought about (s). An owner may preclude himself by his conduct from questioning the validity of a notice to treat (t).

Ss. 124, 125,
126, L. Cl.
Act, 1845.

Interests in
lands omitted
to be pur-
chased
through
mistake.

Sections 124, 125 and 126 of the Lands Clauses Act, 1845, make provisions in respect of interests in lands which, through mistake or inadvertence, the promoters have failed or omitted duly to purchase or for which they have failed or omitted to pay compensation.

Mistake must
be *bonâ fide*.

These sections only protect promoters who through *bonâ fide* mistake or inadvertence have omitted to purchase or pay compensation for any interest in lands on which they have entered (u); "the provision in section 124 is intended to be a shield of protection for persons who have entered into possession, and not a weapon of

(o) *Wilkins v. Mayor, &c. of Birmingham* (1883), 25 Ch. D. 78; 53 L. J. Ch. 93; cf. *London C. C. v. Wilson's Executors*, [1916] 1 K. B. 837.

(p) *Post*, pp. 358, 540.

(q) *Morgan v. Metropolitan Rail. Co.* (1868), L. R. 4 C. P. 97; 38 L. J. C. P. 87; *Tyson v. Mayor, &c. of London* (1871), L. R. 7 C. P. 18; 41 L. J. C. P. 6.

(r) *Syers v. Metropolitan Board of Works* (1877), 36 L. T. 277, *per* Jessel, M. R., at p. 278. This dictum has been followed.

(s) *R. v. South Holland Drainage Committee* (1838), 8 A. & E. 429; *Tower v. Eastern Counties Rail. Co.* (1843), 3 Rail. Cas. 374.

(t) *Thomas v. Dav* (1866), L. R. 2 Ch. 1, *per* Kindersley, V.-C., at p. 3 (n); 36 L. J. Ch. 201. Cf. *Lynch v. Commissioners of Sewers* (1886), 32 Ch. D. 72, at p. 81; 55 L. J. Ch. 409.

(u) *Hyde v. Mayor of Manchester* (1852), 5 De G. & S. 249; *Thomas v. Barry Dock and Rail. Co.* (1889), 5 Times L. R. 360.

offence against one who has not quitted possession" (x). They do not apply where the promoters, being aware of an interest in lands, have neglected to deal with the owner in the manner pointed out in their statutory powers (y).

If promoters are in possession of lands to which they have not acquired a complete title, not through any fault of their own, but solely on account of mistake or inadvertence, section 124 applies, and the mode in which, or the contract under which, they have entered into possession of such lands is immaterial (z).

Section 124 enacts that, whether the period allowed for the purchase of lands shall have expired or not, the promoters shall remain in the undisturbed possession of such lands, provided within six months after notice of an estate, right, interest, or charge, which they have omitted duly to purchase or pay compensation for, in case the same shall not be disputed by the promoters, and in case the same shall be disputed then within six months after the right shall have been finally established at law in favour of the party claiming the same, the promoters shall purchase or pay compensation for the same, and for mesne profits, the amount to be assessed as in other cases where interests in lands are purchased or taken.

S. 124, L. Cl. Act, 1845.

If the company do not dispute the claimant's title, they are entitled to remain in undisturbed possession for six months, and no action for ejectment can be maintained within that period (a). In the same case, *Erle, C. J.*, giving the judgment of the Court, intimates an opinion that the six months begin to run from such time as the claimant's title is brought to the notice of the promoters, in order that they may have an opportunity of considering its validity (a).

If claimant's title not disputed.

Section 124 does not interdict an action of ejectment, but authorizes the Court to give the promoters the benefit of the Act by staying execution after the right of the landowner has been ascertained. But if the company do dispute the claimant's title, then an action for recovery of the lands can at once be commenced; and if such action is finally decided in the claimant's favour, execution

If claimant's title disputed.

(x) *Omagh U. D. C. v. Henderson*, [1907] 2 Ir. R. 310, *per* Palles, C. B.

(y) *Martin v. London, Chatham and Dover Rail. Co.* (1866), L. R. 1 Ch. 501; 35 L. J. Ch. 795; *Stretton v. Great Western and Brentford Rail. Co.* (1870), L. R. 5 Ch. 751; 40 L. J. Ch. 50; *Cardwell v. Midland Rail. Co.* (1904), 21 Times L. R. 22; *Cooke v. L. C. C.*, [1911] 1 Ch. 604.

(z) *Hyde v. Mayor of Manchester* (1852), 5 De G. & S. 249, 265.

(a) *Jolly v. Wimbledon and Dorking Rail. Co.* (1861), 31 L. J. Q. B. 95.

will be stayed during six months, in order that the promoters may have time to comply with the provisions of the section, so as to make good any defect in their title (*b*). The period of six months does not commence to run until there has been a final determination in favour of the claimant (*c*), in which case, *semble*, it is the duty of the claimant to make a claim which it would have been possible for the promoters to satisfy, and not that of the promoters to serve a notice to treat (*c*).

S. 125, L. Cl.
Act, 1845.

Section 125 enacts that, in assessing compensation to be paid for any interest in lands omitted to be purchased by mistake or inadvertence, improvements made by the promoters are not to be taken into account.

S. 126, L. Cl.
Act, 1845.

Section 126 enacts that, where the title of an owner, whose interest in lands has not been purchased through mistake, is disputed by the promoters, and determined in the owner's favour, the promoters shall pay full costs and expenses of the litigation, to be taxed, if necessary, by the regular officer. These costs include costs as between solicitor and client (*d*).

Ss. 58—67,
L. Cl. Act,
1845.

Owner who is
absent from
kingdom or
cannot be
found.

Sections 58—67 of the Lands Clauses Act, 1845, contain the provisions which apply, if an owner, by reason of absence from the kingdom, is prevented from treating, or if he cannot, after diligent inquiry, be found. Compensation in such cases is assessed by a surveyor, and the amount deposited; and if the owner is dissatisfied, he is entitled to an arbitration to decide whether the sum deposited is a sufficient compensation (*e*).

S. 18.
Form of
notice to
treat.

Section 18 of the Lands Clauses Act, 1845, prescribes the persons to whom and the form in which a notice to treat is required to be given (*f*). The form of a notice to treat is defined as follows:—
“The promoters by such notice shall demand from such parties

(*b*) *Salisbury (Marquis of) v. Great Northern Rail. Co.* (1858), 28 L. J. C. P. 40; *Doe d. Hyde v. Mayor of Manchester* (1852), 12 C. B. 474.

(*c*) *Caledonian Rail. Co. v. Davidson*, [1903] A. C. 22; 72 L. J. P. C. 25.

(*d*) *Doe d. Hyde v. Mayor of Manchester*, *supra*; *Young v. North British Rail. Co.* (1888), 15 R. (H. L.) 32; *Caledonian Rail. Co. v. Davidson*, [1903] A. C. 22, 35.

(*e*) *Vide post*, pp. 175, 186.

(*f*) Where lands are mortgaged the mortgagees ought to be served at the same time as the mortgagor, otherwise proceedings in the absence of the former will not bind them; but the mortgagees may be served at a later date after it has become apparent that the compensation assessed is not sufficient to pay off the mortgages: *Cooke v. London C. C.*, [1911] 1 Ch. 604.

the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof ; and every such notice shall state the particulars of the land so required, and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works."

It is not competent for the promoters to give a notice to treat for less than the whole interest of the owner in the land required to be taken. Where the promoters had given a second notice to treat, containing a reservation as to any interest they might acquire under a prior notice to treat given to other persons, it was held that the reservation did not affect the claim of the owner, and that he was entitled to formulate and bring forward a claim for the whole interest to which he alleged he was entitled (*h*). But where a notice to treat has been validly withdrawn, the promoters are entitled to proceed to the assessment of compensation upon a fresh notice (*i*).

For whole interest only.

Where promoters have entered into an agreement with a lessor to take certain lands, there is no obligation upon them to serve a notice to treat upon the lessee except as regards such portions of the lands leased as they may require at the date of the notice (*k*). If they subsequently require to take further portions of the land subject to the lease, it would be competent for them to serve a second notice to treat on the lessee for such additional land.

In the event of the promoters requiring to take land under a public street or highway, it is necessary in the absence of any special provision in the private Act to serve a notice to treat on the owners of the sub-soil (*l*). It is now settled that the interest of a public authority in the surface of a street extends only to so much thereof whether above or below the surface (*m*) as is necessary for the control, protection and maintenance of the street as a highway

Land under a public street or highway.

(*h*) *Re Chilworth Gunpowder Co. and Manchester Ship Canal Co.* (1891), 8 Times L. R. 79.

(*i*) *Ashton Vale Iron Co. v. Mayor, &c. of Bristol*, [1901] 1 Ch. 591; 70 L. J. Ch. 230.

(*k*) *Stevenson v. North British Rail. Co.* (1902), 4 F. (Ct. of Sess.) 224.

(*l*) *Ramsden v. Manchester, &c. Rail. Co.* (1848), 1 Ex. 723; *Goodson v. Richardson* (1874), L. R. 9 Ch. 221; 43 L. J. Ch. 790; cf. *Souch v. E. London Rail. Co.* (1874), L. R. 16 Eq. 108.

(*m*) *Finchley Electric Light Co. v. Finchley U. C.*, [1903] 1 Ch. 437.

for public use, and does not extend to the sub-soil (*m*) or *usque ad coelum* (*n*). It has not been usual in practice for owners to insist on a notice to treat in respect to their interest in the sub-soil under streets or highways, since in the majority of cases no substantial claim could be maintained, but the fact that a claim may only be nominal in amount does not affect the legal rights of the parties, and the owner of the sub-soil is entitled to the same protection as a surface owner (*o*). The presumption that half the soil of the road is intended to pass to a purchaser under a conveyance of land described as bounded by a public thoroughfare, is equally applicable to streets in a town as to highways in the country (*p*); but this presumption may be rebutted by evidence of surrounding circumstances which lead to the inference that no part of the soil of the highway was intended to pass or did pass (*q*). In the case of lessees, the question whether the right of the lessee extends over the same area as the right of the owner will turn upon the terms of the lease in each case, but it is doubtful whether the presumption would be as strong in the case of a lease as in the case of a grant (*r*).

Where a corporation had statutory powers to erect poles and posts on, in, over or under any street or road, and these poles and posts were sunk in the soil to a considerable depth below the surface, it was held that this did not constitute a taking of the land necessitating a notice to treat, and that the owner's right, if any, was to claim compensation for injurious affection (*s*).

A company entitled to appropriate and use the sub-soil and under-surface without being required wholly to take the lands of the owner, must comply with the provisions of the Lands Clauses

(*m*) *Tunbridge Wells Corporation v. Baird*, [1896] A. C. 434; 65 L. J. Q. B. 451; *Vestry of St. Mary, Battersea v. County of London and Brush Provincial Electric Lighting Co.*, [1899] 1 Ch. 474; 68 L. J. Ch. 238; cf. *Municipal Council of Sydney v. Young*, [1898] A. C. 457; *Westminster Corporation v. London and North Western Rail. Co.*, [1905] A. C. 426.

(*n*) *Finchley Electric Light Co. v. Finchley U. C.*, [1903] 1 Ch. 437.

(*o*) *Goodson v. Richardson* (1874), L. R. 9 Ch. 221; 43 L. J. Ch. 790.

(*p*) *In re White's Charities, Charity Commissioners v. London Corporation*, [1898] 1 Ch. 659; 67 L. J. Ch. 430; *Westminster Corporation v. London and North Western Rail. Co.*, [1905] A. C. 426; 74 L. J. Ch. 629.

(*q*) *Mappin Bros. v. Liberty & Co.*, [1903] 1 Ch. 118; 72 L. J. Ch. 63.

(*r*) *Haynes v. King*, [1893] 3 Ch. 439; 63 L. J. Ch. 21; *Landrock v. Met. Dist. Rail. Co.* (1886), 3 Times L. R. 162.

(*s*) *Escott v. Newport Corporation*, [1904] 2 K. B. 369.

Act, 1845, as to the purchase of lands, and serve the usual notice to treat (*t*).

It is important that the notice to treat should accurately indicate the position and area of the lands required to be taken by the promoters (*u*). The notice should also give full information to the owner of the land that it is to be taken for the purposes of the railway, but need not go into details as to the particular purposes for which it is taken (*x*). Provided that the description of the lands is not ambiguous, no special form is required, and the following form is a convenient one to adopt: "The lands of which particulars are contained in the schedule hereto, and which said lands, so required, are, for the better description thereof, delineated on the plan attached hereto, and delivered herewith, and are thereon distinguished by a red colour" (*y*). Where the promoters, who had no power to compel the creation of an easement, described land in a notice to treat as fronting on a "proposed road," which road the landowner subsequently decided not to make, it was held that the reference in the notice to treat was merely descriptive, and that the proposed road could not be regarded as an actually made road (*z*). Where a company gave a notice to treat for a stable only, and the subsequent conveyance to them granted the premises with all rights, &c. enjoyed as part thereof, it was held that the company were entitled to use the approach road to the stable, and that the notice to treat was sufficient (*a*). A notice to treat that is bad as to part is bad altogether as it cannot be divided (*b*).

Notice should accurately describe lands in question.

If it is intended to purchase or take minerals for the purpose of the undertaking, this intention should be specifically stated in the notice to treat. In ordinary cases, the sub-soil is not required in order to carry out a statutory undertaking, and in the case of railway and waterworks companies, minerals are specially excepted

Notice should specify if minerals are to be taken.

(*t*) *Farmer v. Waterloo and City Rail. Co.*, [1895] 1 Ch. 527; 64 L. J. Ch. 338.

(*u*) *Kemp v. London, Brighton and South Coast Rail. Co.* (1839), 3 Jur. 403; *Protheroe v. Tottenham, &c. Rail. Co.*, [1891] 3 Ch. 278.

(*x*) *Wood v. Epsom, &c. Rail. Co.* (1860), 30 L. J. C. P. 83.

(*y*) *Dowling v. Pontypool, Caerleon, &c. Rail. Co.* (1874), L. R. 18 Eq. 714; 43 L. J. Ch. 761; *Finck v. London and South Western Rail. Co.* (1890), 44 Ch. D. 330; 59 L. J. Ch. 458; *Sims v. Commercial Rail. Co.* (1838), 1 Rail. Cas. 431; *Simpson v. Lancaster and Carlisle Rail. Co.* (1847), 15 Sim. 580. Cf. *Wood v. Epsom, &c. Rail. Co.* (1860), 30 L. J. C. P. 83.

(*z*) *In re London School Board and Foster* (1903), 87 L. T. 700.

(*a*) *Bayley v. Great Western Rail. Co.* (1884), 26 Ch. D. 434, 451.

(*b*) *Coots v. Caledonian Rail. Co.* (1904), 6 F. 1042.

from an ordinary purchase, unless they are included in express terms (*c*). There is without doubt power to include minerals in a notice to treat, if they are required by the promoters (*d*).

Notice need
not be
stamped.

The notice to treat need not be stamped either when served or on production in an action for specific performance (*e*).

Signature
of notice to
treat.

If the special Act incorporates the Companies Clauses Act, 1845, the notice to treat can be signed in accordance with the provisions of section 139 :—" Every summons, notice, or other such document, requiring authentication by the company, may be signed by two directors, or by the treasurer or secretary of the company, and the same may be in writing or in print, or partly in writing and partly in print." Where this form is not applicable, or has not been followed, the notice to treat should be authenticated by the seal of the company (*f*).

Owners not
compelled to
send in claim
unless they
desire
arbitration.

The notice to treat demands from owners the particulars of their estate and interest in the lands required, and of the claims made by them in respect thereof. There is nothing to compel the owners of lands to supply the particulars demanded in the notice to treat (*g*); and if they are not desirous of coming to an amicable arrangement with the promoters, there is no reason why they should do so. It is an optional proceeding so far as the owners are concerned, except where they elect to have the amount of compensation assessed by arbitration, in which case (section 23) they are required to state the nature of the interest in respect of which compensation is claimed. If particulars are given, they should be such as would enable the promoters to meet the just claim of the owner by ascertaining what is the true value of the land, and offering him compensation accordingly, and the quantity as well as the quality of the estate or interest of the owner should be

(*c*) *Vide post*, p. 132; Railways Clauses Act, 1845, ss. 77—85, *post*, pp. 452—454; Waterworks Clauses Act, 1847, ss. 18—27, *post*, pp. 463—466; cf. Public Health (Support of Sewers) Act, 1883, *post*, pp. 343, 512.

(*d*) *Errington v. Metropolitan District Rail. Co.* (1882), 19 Ch. D. 559; 51 L. J. Ch. 305; *Smith v. Great Western Rail. Co.* (1878), 3 App. Cas. 165; 47 L. J. Ch. 97; *Holliday v. Mayor, &c. of Wakefield*, [1891] A. C. 81; 60 L. J. Q. B. 361.

(*e*) *Rawlings v. Metropolitan Rail. Co.* (1868), 37 L. J. Ch. 824.

(*f*) *Vide ante*, pp. 53, 54.

(*g*) That such particulars have not been supplied is not a good plea to an action for a mandamus: *Birch v. Vestry of St. Marylebone* (1869), 20 L. T. 697. Cf. Book II., p. 326, as to costs under the Act of 1919.

stated (*h*). The cases which have been decided have arisen on similar words in section 68 (*i*).

The inability to get information of the nature of the interest claimed by parties with whom they are treating is, in many cases, a hindrance to promoters who desire to make a reasonable offer of compensation; provisions are included in certain private Acts (*k*) whereby an owner is compelled to give sufficient particulars of his interest, subject to a penalty in payment of costs (*l*). Except under certain special Acts.

The notice to treat must be given to "all the parties interested in such lands, or to the parties enabled by this Act to sell and convey or release the same, or such of the said parties as shall, after diligent inquiry, be known to the promoters of the undertaking" (*m*). It is a question of convenience to the promoters, whether they give the required notice to parties who, independently of the Lands Clauses Act, 1845, can give a good title, such as trustees with an absolute power of sale; or to the parties enabled by that Act to sell and convey and release lands, and who can treat, not only for their own interests, but also for interests in reversion, remainder, or expectancy. Subsequent proceedings for the purpose of obtaining a good title, and the question of parties to a conveyance, depend upon the interest of the parties with whom the promoters have elected to treat (*n*). Persons to whom notice should be given.

The expression "all parties interested" includes all persons who have any security charged on lands required to be taken. An equitable mortgagee is included (*o*), and so, too, is an annuitant with a charge on surface buildings (*p*). An ordinary tithe rent-charge has been held not to be a charge upon the inheritance, and All parties interested.

(*h*) *Healey v. Thames Valley Rail. Co.* (1864), 34 L. J. Q. B. 52.

(*i*) *Cameron v. Charing Cross Rail. Co.* (1864), 33 L. J. C. P. 313; *Healey v. Thames Valley Rail. Co.* (1864), 34 L. J. Q. B. 52; *Lovering v. City of London, &c. Subway Co.* (1891), 7 Times L. R. 301, 600.

(*k*) *E.g.*, London County Council (Tramways and Improvements) Act, 1901, s. 44.

(*l*) And for similar provisions in Acquisition of Land (Assessment of Compensation) Act, 1919, see *post*, p. 326.

(*m*) S. 18, L. Cl. Act, 1845.

(*n*) *In re Pigott and Great Western Rail. Co.* (1881), 18 Ch. D. 146; 50 L. J. Ch. 679.

(*o*) *Martin v. London, Chatham and Dover Rail. Co.* (1866), L. R. 1 Ch. 501; 35 L. J. Ch. 795; cf. *Cooke v. London C. C.*, [1911] 1 Ch. 604; and *R. v. Middlesex (Clerk of the Peace)*, [1914] 3 K. B. 259.

(*p*) *University Life Assurance Co. v. Metropolitan Rail. Co.*, (1866) W. N. 167; *Rogers v. Hull Dock Co.* (1863), 34 L. J. Ch. 165.

the holders of such tithe rentcharge would not be "parties interested" (*q*). In some cases special provisions have been introduced into private Acts giving either indemnity or compensation to the owners of "tithes" which constitute annuities or periodical sums of money charged on land under the Act 37 Hen. 8, c. 12 (*r*).

Where the goodwill of a business depends on the personal skill of the owner, it does not pass to a mortgagee of the trade premises, and the trader and not the mortgagee is in this case entitled to compensation (*s*).

Trustees.

Where estates are settled in the names of trustees, a question may arise as to the proper parties with whom the promoters should deal by giving a notice to treat.

If a trustee has an absolute power of sale, and the promoters are willing to accept a title given by the exercise of such power, it is sufficient to serve a notice to treat on the trustee, and the tenant for life or other beneficiary should not be served with a notice to treat, or in any way made a party to the proceedings, since apart from any of the enabling provisions in section 7 of the Lands Clauses Act, 1845, such trustee has a power of selling the property included in the trust to any company who have been authorized to become purchasers.

But promoters cannot, under section 7 of the Lands Clauses Act, 1845, omit to serve a notice to treat on any *cestui que trust* who is of full age and under no personal disability, where the trustees cannot sell without his consent. It was never intended that trustees should be enabled to treat with and give a title to promoters, to the exclusion of the persons really interested. Even where trustees can sell without the consent of their *cestui que trust*, who is tenant for life, the promoters may elect to treat with the tenant for life, and having so elected they must pay the purchase-money into Court for the benefit of the beneficiaries, and not to the trustees. Unless trustees have an absolute power of sale, the proper parties to carry on the proceedings against the promoters

(*q*) *Bailey v. Badham* (1885), 30 Ch. D. 84; 54 L. J. Ch. 1067.

(*r*) See *Re Esdaile, Esdaile v. Esdaile* (1886), 54 L. T. 637; *Payne v. Esdaile* (1888), 13 App. Cas. 613; 58 L. J. Ch. 299; *Esdaile v. Metropolitan District Rail. Co.* (1881), 46 J. P. 103.

(*s*) *Cooper v. Metropolitan Board of Works* (1883), 25 Ch. D. 472; 53 L. J. Ch. 109.

are the beneficiaries and not the trustees (*t*). If there is a doubt as to the power of a trustee to sell, a notice to treat should be served on the *cestui que trust*, and a title should only be accepted under the provisions of the Lands Clauses Act, 1845.

In addition to the question of dealing with trustees and *cestuis que trustent*, promoters have to determine in what way they shall deal with owners having interests in remainder, reversion, or expectancy. Except in the case of married women entitled to dower, or lessees or occupiers, it is sufficient to serve a notice to treat on the tenant for life or person for the time being entitled to the benefit of rent and profits, and such person has power to bind remaindermen or reversioners. There is no difference whether the estates are legal or equitable, although in the latter case trustees must join in the conveyance (*u*). Interests in remainder or expectancy.
Equitable interests.

The exception of lessees is most material, since a very large amount of lands taken for public purposes will be in the hands of lessees. Every lessee or sub-lessee is entitled to a separate notice to treat, except under section 121 (*x*), and no lessee or sub-lessee can represent more than his own immediate interest (*y*). Lessees.

If any owner entitled to be served with a notice to treat is not so served, he can enforce the ordinary legal remedies against the promoters, who, so far as his interest is concerned, have not brought themselves within the protection of their statutory powers.

Sections 19 and 20 of the Lands Clauses Act, 1845, prescribe the method in which a notice to treat should be served on individuals or on corporations (*z*). The service of a notice to treat is not valid unless it is such as to bind both the promoters and the parties interested (*a*). Service of notice.

If the special Act prescribes a particular person, on whom notice should be served, a notice is not validly served, except on such

(*t*) *Peters v. Lewes and East Grinstead Rail. Co.* (1881), 18 Ch. D. 429; 50 L. J. Ch. 839; *In re Pigott and Great Western Rail. Co.* (1881), 18 Ch. D. 146; 50 L. J. Ch. 679.

(*u*) *Lippincott v. Smyth* (1860), 29 L. J. Ch. 520.

(*x*) The dictum of Jessel, M. R., in *Syers v. Metropolitan Board of Works* (1877), 36 L. T. 277, 278, has been followed.

(*y*) *Abrahams v. Mayor, &c. of London* (1868), L. R. 6 Eq. 625; 37 L. J. Ch. 732; cf. *Brandon v. Brandon* (1864), 34 L. J. Ch. 333; *Re Chilworth Gunpowder Co. and Manchester Ship Canal Co.* (1891), 8 Times L. R. 79.

(*z*) Appendix, p. 395.

(*a*) *R. v. Great Northern Rail. Co.* (1876), 2 Q. B. D. 151, 155; 46 L. J. Q. B. 4; *Shepherd v. Corporation of Norwich* (1885), 30 Ch. D. 553; 54 L. J. Ch. 1050.

person (*b*). Service upon an occupier, who was the owner's agent to collect the rents of the property included in the notice, is not a service on the owner, unless he has been authorized by the owner to accept such service (*c*). Acceptance of service of a bad counter-notice by the solicitors of a railway company does not bind the company (*d*).

Time for
serving notice
to treat.

The time within which notice to treat must be served, where such notice is followed by the exercise of compulsory powers, is fixed either by the provisions of the special Act, or by section 123 of the Lands Clauses Act, 1845, which enacts that :

"The powers of the promoters of the undertaking for the compulsory purchase or taking of lands for the purposes of the special Act, shall not be exercised after the expiration of the prescribed period, and, if no period be prescribed, not after the expiration of three years from the passing of the special Act." In the computation of the three years, the day of the passing of the Act must be excluded. Where an Act had received the Royal Assent on August 9th, 1899, it was held that a notice served on August 9th, 1902, was within the prescribed period (*e*).

If the notice is not actually served on the proper person within the prescribed period, it cannot be adopted by him after the expiration of such period, even by serving a counter-notice under section 92 (*f*).

If, however, no limit of time as to the exercise of compulsory powers is fixed in the Acts of Parliament under which the promoters are incorporated, no inference can be made that a reasonable time is intended (*g*).

Service of
notice to treat
within pre-
scribed time

The giving of a notice to treat within the prescribed time, although no further step is taken, is a sufficient exercise of their compulsory powers by the promoters, and enables them, after its

(*b*) *R. v. Metropolitan Rail. Co.* (1867), 17 L. T. 291; *Earl of Harrington v. Metropolitan Rail. Co.* (1866), 13 L. T. 583, 658. As to service on solicitor of a company, cf. *R. v. Maryport and Carlisle Rail. Co.* (1850), 15 L. T. O. S. 134.

(*c*) *Shepherd v. Corporation of Norwich* (1885), 30 Ch. D. 553; 54 L. J. Ch. 1050.

(*d*) *Treadwell v. London and South Western Rail. Co.* (1884), 54 L. J. Ch. 565.

(*e*) *Goldsmiths' Company v. West Metropolitan Rail. Co.*, [1904] 1 K. B. 1; 72 L. J. K. B. 931.

(*f*) *Treadwell v. London and South Western Rail. Co.* (1884), 54 L. J. Ch. 565; but see *R. v. Metropolitan Rail. Co.* (1867), 17 L. T. 291.

(*g*) *Thicknesse v. Lancaster Canal Co.* (1838), 4 M. & W. 472.

expiration, and at any time before the expiration of the time limited for the completion of the works, to take subsequent proceedings for obtaining possession of lands required by them (*h*). enables promoters to use compulsory powers.

Though the time limited for the completion of the works has expired, yet if the company *bonâ fide* requires the land, and some step has been taken *bonâ fide* which alters the *status quo ante*, there would be a continuing obligation upon the company to take the land, and a corresponding obligation upon an owner to part with his land on receiving due compensation. But where a notice to treat has been given, and no further step has been taken either by the promoters or the landowner, and the period for completing the works has expired, neither the promoters nor the landowner, unless the delay can be explained, can claim the benefit of the notice (*i*). The time limit does not apply to alterations and repairs executed under section 17 of the Railways Clauses Act, 1845 (*k*).

The effect of a notice to treat, as an element in the formation of a contract, has already been considered (*l*), but the general nature of the relationship which it creates between the promoters and an owner is of great importance. Effect of notice to treat.

The notice to treat, when once properly given, is binding on the promoters, and after giving such notice they can be compelled, within a reasonable time, to take all subsequent steps necessary for ascertaining the amount of compensation due to the owner. This was settled in *R. v. Hungerford Market Co.* (*m*), and has not since been questioned. It is binding on promoters.

The promoters cannot rescind a valid notice to treat in order to give another applying to a smaller quantity of the same lands (*n*).

(*h*) *Tiverton, &c. Rail. Co. v. Loosemore*, (1884), 9 App. Cas. 480, 495; 53 L. J. Ch. 812; *Seymour v. London and South Western Rail. Co.* (1859), 5 Jur. N. S. 753; *Sparrow v. Oxford, Worcester, &c. Rail. Co.* (1852), 21 L. J. Ch. 731; *Marquis of Salisbury v. Great Northern Rail. Co.* (1852), 21 L. J. Q. B. 185; *Kemp v. South Eastern Rail. Co.* (1872), L. R. 7 Ch. 364, 372; 41 L. J. Ch. 404; *Birmingham and Oxford Junction Rail. Co. v. R.* (1851), 20 L. J. Q. B. 304.

(*i*) *Tiverton, &c. Rail. Co. v. Loosemore* (1884), 9 App. Cas. 480, at p. 489; 53 L. J. Ch. 812; *Richmond v. North London Rail. Co.* (1868), L. R. 3 Ch. 679; 37 L. J. Ch. 886; *Kemp v. South Eastern Rail. Co.* (1872), L. R. 7 Ch. 364, 372; 41 L. J. Ch. 404; *Ystalyfera Coal and Iron Co. v. Neath and Brecon Rail. Co.* (1873), L. R. 17 Eq. 142; 43 L. J. Ch. 476; cf. *Hedges v. Metropolitan Rail. Co.* (1860), 28 Beav. 109.

(*k*) *Emsley v. North Eastern Rail. Co.*, [1896] 1 Ch. 418; 65 L. J. Ch. 385.

(*l*) *Ante*, p. 55.

(*m*) (1832), 4 B. & Ad. 327. *Vide post*, p. 87.

(*n*) *Tawney v. Lynn and Ely Rail. Co.* (1847), 16 L. J. Ch. 282.

But where a notice to treat has been validly withdrawn, the promoters are in the same position as if no notice to treat had been given: they may give a second notice in respect of the land comprised in the first notice, or any part thereof (*o*), and no compensation is payable by way of damages for the withdrawal (*p*).

In *Morgan v. Metropolitan Rail. Co.* (*q*), the company was required to give six months' notice before entering upon or taking any lands under the powers of their Acts. The company gave notice to the plaintiffs of their intention to take, at the expiration of six months, a tenement for which the plaintiffs were rated. It was held that such notice of intention to take lands, although it did not purport to be a notice under, or contain the particulars mentioned in, section 18 of the Lands Clauses Act, 1845, bound the defendants to proceed with the purchase of the premises within a reasonable time. Kelly, C. B., in delivering the judgment of the Court, says, "Then comes the question, whether it was obligatory on the defendants to take the premises at all. Ever since the case of *R. v. Hungerford Market Co.* (*r*) it has uniformly been held that, wherever a company is entitled to take lands compulsorily under the powers of an Act of Parliament, if they gave notice of their intention to take, that is an exercise of their option from which they cannot recede, and the notice operates as a contract or an undertaking by them to become the purchasers. That case was decided in 1832, and it has never yet been questioned."

Two exceptions.

(1.) Counter-notice under s. 92.

(2.) Commissioners acting for executive.

There are only two exceptions to the universality of this rule.

(1.) Where a counter-notice is given under section 92, the promoters cannot be compelled to proceed to take the whole of a house or other building or manufactory (*s*).

(2.) Where notice has been given by commissioners acting for the public on behalf of the executive for the purpose of ascertaining

(*o*) *Ashton Vale Iron Co. v. Mayor, &c. of Bristol*, [1901] 1 Ch. 591; 70 L. J. Ch. 230; *Coats v. Caledonian Rail. Co.* (1904), 6 F. 1042.

(*p*) *Wild v. Woolwich B. C.*, [1910] 1 Ch. 35; cf. Book II., p. 328.

(*q*) (1868), L. R. 3 C. P. 553; 4 C. P. 97; 37 L. J. C. P. 265; 38 L. J. C. P. 87.

(*r*) (1832), 4 B. & Ald. 327. *Vide post*, p. 87.

(*s*) *King v. Wycombe Rail. Co.* (1860), 29 L. J. Ch. 462; *Grierson v. Cheshire Lines Committee* (1874), L. R. 19 Eq. 83; 44 L. J. Ch. 35; *R. v. London and South Western Rail. Co.* (1848), 17 J. J. Q. B. 326; *Siegenberg v. Metropolitan District Rail. Co.* (1883), 49 L. T. 554; *Benington v. Metropolitan Board of Works* (1885), 54 L. T. 837; cf. *Morrison v. Great Eastern Rail. Co.* (1885), 53 L. T. 384; *Thompson v. Tottenham, &c. Rail. Co.* (1892), 67 L. T. 416. *Vide ante*, pp. 35 et seqq.

merely the price at which land will be sold, it has been held that the special provisions of the Act enabled the commissioners to withdraw such notice (s). This case is of very limited application, and the principle does not apply to corporations or trustees for public purposes who are not directly representatives of the Crown (t).

The notice to treat does not prevent an owner dealing with his property, provided he does not increase the burdens of the company (u), but it is so far binding that it fixes the interest in respect of which the owner can claim compensation, and determines the time at which the value of that interest shall be considered for the purposes of the assessment of purchase-money or compensation. In other words, the interest in respect of which compensation has to be assessed cannot be varied after receipt of the notice to treat; but must be valued *rebus sic stantibus* just as it is at the moment when the notice to treat is given (v). The same rule applies to the publication of the appointment of an arbitrator under the Railways (Ireland) Act, 1851, which is equivalent to a notice to treat under the Lands Clauses Act, 1845 (x).

It fixes interest of owner in land taken.

An agreement for the creation of an interest in lands entered into prior to the service of the notice to treat would entitle the beneficiary under such agreement to receive a notice to treat and to claim compensation for his equitable interest.

Equitable interests.

Where an equity had been raised between the lessee of a building estate and his lessor, which would have entitled the lessee to claim an extension of time under a building agreement, it was held that a company proceeding under compulsory powers could not disregard the interest created by the equity (y); but where a notice to treat has been given to a building owner in respect of some of the land

(s) *R. v. Commissioners of Woods and Forests* (1850), 19 L. J. Q. B. 497.

(t) *Steele v. Mayor, &c. of Liverpool* (1866), 7 B. & S. 261; *Birch v. St. Marylebone Vestry* (1869), 20 L. T. 697.

(u) *Mercer v. Liverpool, &c. Rail. Co.*, [1904] A. C. 461, 465; 73 L. J. K. B. 960; *Dawson v. Great Northern and City Rail. Co.*, [1905] 1 K. B. 260; 74 L. J. K. B. 190; *Zick v. London United Tramways, Limited*, [1908] 2 K. B. 126.

(v) *Penny v. Penny* (1868), L. R. 5 Eq. 227, 236; 37 L. J. Ch. 340.

(x) *Re Doyne's Traverses* (1889), 24 L. R. Ir. 287; *Wilkins v. Mayor, &c. of Birmingham* (1883), 25 Ch. D. 78; 53 L. J. Ch. 93; cf. *London C. C. v. Wilson's Executors*, [1916] 1 K. B. 837.

(y) *Birmingham and District Land Co. v. London and North Western Rail. Co.* (1888), 40 Ch. D. 268.

included in a building agreement, such building agreement still remains binding so far as the promoters and the owner are concerned (z).

Date at which compensation assessed.

In practice it is generally agreed that the amount of compensation shall be assessed as from the date of the inquiry, or from the date when the promoters would take, or had taken, possession of the lands in question for the purpose of their undertaking; but if the claimant can prove that he has suffered loss between the time of his receiving notice to treat and his dispossession by the promoters, he is entitled to claim for it (a).

In *Ex parte Edwards* (b), the owner, after receipt of the notice to treat, agreed to let the property for three years to a person who had previously occupied part of it as a weekly tenant. But it was held that the tenant could not recover any compensation from the undertakers. Romilly, M. R., said, "I am of opinion that the owner's power of dealing with his property is concluded when the notice to treat is served, and that a lease granted subsequently to that period to a tenant cannot properly be compensated for."

The case of *Tyson v. Mayor, &c. of London* (c), decides that where the promoters, in accordance with provisions contained in a special Act, have expressed, by some act from which they cannot recede, their intention to take certain lands, the value of any interest taken must be assessed as at the time when such act was complete. In this case a notice had been served under section 64 of the London City Improvement Act, 1847 (10 & 11 Vict. c. cclxxx.), which provides that all persons in the actual possession of any lands to be taken, as owners, leaseholders, tenants-at-will, or lessees for a year or any shorter time or otherwise, should, at the expiration of six months from and after notice in writing from the corporation, peaceably and quietly deliver up possession of such lands, but no such possession to be delivered up until such payment or deposit of purchase or compensation money should have been made, as is directed by the Lands Clauses Act, 1845. Willes, J., says in his judgment, "That notice, when it is given, whether it be in such a form as to include a notice to treat or not, has an

(z) *In re Furness and Willesden U. D. C.* (1905), 22 Times L. R. 52.

(a) *Cranwell v. Mayor of London* (1870), L. R. 5 Ex. 284; 39 L. J. Ex. 193.

(b) (1871), L. R. 12 Eq. 389; 40 L. J. Ch. 697; *Wilkins v. Mayor of Birmingham* (1883), 25 Ch. D. 78; 53 L. J. Ch. 93. Cf. *Carnochan v. Norwich and Spalding Rail. Co.* (1858), 26 Beav. 169.

(c) (1871), L. R. 7 C. P. 18; 41 L. J. C. P. 6.

equally binding effect on the parties concerned. It is not to be treated as merely an intimation that the promoters will take, if they afterwards make up their minds to give a notice to treat. That being so, it appears to me, that the period of giving such notice is the period to which all questions relating to the right of compensation must be referred."

Where a lease contained a proviso that in case of any part of the land leased being compulsorily taken, it should be lawful for the lessor to re-enter upon and re-possess it, it was held that the notice to treat had the effect of bringing the proviso into operation, and that the lessor was entitled to the commercial value of the land taken as freed from the lease (*d*). But where a notice to treat had been given to a lessee whose lease contained a proviso enabling the lessor to re-enter for the purpose of building, it was held that the lessor was not entitled to take advantage of such provision in order to enhance the value of his interest on a purchase by a railway company, or to defeat the claim of the lessee to compensation (*e*).

As between
lessor and
lessee.

Where no proceedings had been taken under a notice to treat, but subsequently thereto the lessor in accordance with the terms of the lease had given the lessee notice to terminate his tenancy at the expiration of three months, it was held that the giving of the notice to treat was immaterial, and that the amount of compensation could be determined by a magistrate under section 121 (*f*).

So long as no new interest is created which would increase the burdens of the promoters, the owner who has received a notice to treat has power to deal with the land the subject of the notice, or with the adjoining lands alleged to be injuriously affected (*g*).

Power of
owner to deal
with lands
after notice to
treat.

In *Metropolitan Rail. Co. v. Woodhouse* (*h*), Stuart, V.-C., restrained an owner from selling property comprised in a notice to treat; but it would have been sufficient for the company to have

(*d*) *In re Morgan and London and North Western Rail. Co.*, [1896] 2 Q. B. 469; 66 L. J. Q. B. 30; *In re Athlone Rifle Range*, [1902] 1 Ir. R. 433.

(*e*) *Johnson v. Edgware, &c. Rail. Co.* (1866), 14 L. T. 45.

(*f*) *R. v. Kennedy*, [1893] 1 Q. B. 533; 62 L. J. M. C. 168; *Bexley Heath Rail. Co. v. North*, [1894] 2 Q. B. 579; 64 L. J. M. C. 17.

(*g*) *Mercer v. Liverpool, &c. Rail. Co.*, [1904] A. C. 461; 73 L. J. K. B. 960; *Dawson v. Great Northern and City Rail. Co.*, [1905] 1 K. B. 260; 74 L. J. K. B. 190; *Sewell v. Harrow, &c. Rail. Co.* (1902), 19 Times L. R. 130; 20 Times L. R. 21.

(*h*) (1865), 34 L. J. Ch. 297.

given notice to any intending vendee, and in that case they would not have been bound by an interest created subsequently to the notice to treat.

In case of
injurious
affection.

The principle that an interest in land created subsequently to the date of the notice to treat cannot form the subject of compensation has been extended to the case of adjoining land of the same owner alleged to be injuriously affected. It has been held that after such notice the promoters have a legal right, after complying with the statutory conditions, to execute works so as to damage the property of the owner on whom the notice has been served (*i*).

How long
notice binds
owner.

In *Kemp v. South Eastern Rail. Co.* (*k*), Lord Hatherley, L. C., said: "A notice to treat, given by a company, is perfectly good, so long as the company are empowered to carry into effect their works under the Act of Parliament and no longer. It may be given the day before the compulsory powers to take the land expire, and then it will last until the time for which that land is wanted, namely, the time for making the works, has also expired, but no longer." But this dictum must be taken to be modified by the decision of the House of Lords in *Tiverton, &c. Rail. Co. v. Loosemore* (*l*). In that case the company served on the landowner a notice to treat a few days before the expiration of the three years limited for the compulsory purchase of lands. A correspondence ensued, no agreement was come to, and the compensation was not assessed. Thirteen days before the expiration of the five years limited for the completion of works, the company entered under section 85 of the Lands Clauses Act, 1845, and proceeded to make the railway against the objection of the landowner. It was held that whether the railway could or could not have been completed within the thirteen days the entry was lawful, and that the company were entitled to remain and complete the railway after the expiration of the five years, the landowner being entitled to compensation under the provisions of the Lands Clauses Acts.

(*i*) *Mercer v. Liverpool, &c. Rail. Co.*, [1903] 1 K. B. 652; 72 L. J. K. B. 128, *per* Stirling, J.; [1904] A. C. 461; 73 L. J. K. B. 960.

(*k*) (1872), L. R. 7 Ch. 364, at p. 372; 41 L. J. Ch. 404; *cf.* *Ystalyfera Iron Co. v. Neath and Brecon Rail. Co.* (1873), L. R. 17 Eq. 142; 43 L. J. Ch. 476.

(*l*) (1884), 9 App. Cas. 480; 53 L. J. Ch. 812; *cf.* *Hedges v. Metropolitan Rail. Co.* (1860), 28 Beav. 109; *Midland Rail. Co. v. Great Western Rail. Co.*, [1908] 2 Ch. 644; [1909] A. C. 445.

In the same case Earl Cairns said (*m*): "There have been cases in which a railway company has given a notice to a landowner to treat for the purchase of land, and no further step has been taken either by the company or the landowner, and the extended period for completing the works has expired, and the question has been raised, Could the company in that state of things proceed with its notice to treat and assess the compensation under the Lands Clauses Act? Were such a case now to arise, I should be disposed to think, as I was disposed to think in *Richmond v. North London Rail. Co.* (*n*), that if nothing more was done, and the company have slept on their rights, and certainly if the delay cannot be explained, they should be held to be disabled from going on with any compulsory purchase, and in such a case the landowner should, I think, be held to be disabled also. The parties have been content to let the time run out. There is no *rei interventus*, nothing which requires to be undone. The whole matter has been a project merely, and as a project it has come to an end."

Effect of delay on rights of owner and promoters.

Where notice to treat has been served within the time limited for the exercise of compulsory powers of purchase of land, but no further step of any kind has been taken until after the expiration of the time limited for the completion of the works, the company cannot claim to proceed under the notice (*o*).

The clause in the special Act, which fixes a limit of time for the completion of the works of the undertaking, is a disabling clause, and not an enabling one; and although a notice to treat may become invalid if not followed up within this limit, the promoters cannot claim to take no steps under a notice to treat until such limit is reached (*p*).

There is nothing to prevent the promoters giving to the same owner more than one notice to treat for lands required by them (*q*); but any lands comprised in a notice to treat are so far bound, and

More than one notice may be given to same owner.

(*m*) At p. 489.

(*n*) *Richmond v. North London Rail. Co.* (1868), L. R. 5 Eq. 352; 3 Ch. 679; 37 L. J. Ch. 273, 886.

(*o*) *S. C.*; *Hedges v. Metropolitan Rail. Co.* (1860), 28 Beav. 109.

(*p*) *Baker v. Metropolitan Rail. Co.* (1862), 32 L. J. Ch. 7.

(*q*) *Simpson v. Lancaster and Carlisle Rail. Co.* (1847), 15 Sim. 580; *Stamps v. Birmingham, Wolverhampton and Stour Valley Rail. Co.* (1848), 17 L. J. Ch. 431; *affd. S. C.*, 2 Ph. 673; *Coats v. Caledonian Rail. Co.* (1904), 6 F. 1042.

unless such notice is validly withdrawn (*r*) no subsequent notice can, in respect of such lands, have any effect on the relationship between the promoters and owner which such first notice to treat has created (*s*). A subsequent notice to treat may increase but may not diminish the quantity of the lands proposed to be taken. Where the surface has already been purchased a notice to treat can be given for the minerals, and it makes no difference that the strata are horizontal and not vertical (*t*).

Summary of
steps subse-
quent to
notice to
treat.

The steps to be taken by either party, after a notice to treat has been given, form the subject of the succeeding chapters, but they may briefly be summarized under the following heads :—

The promoters upon making a deposit, and giving a bond in accordance with section 85 of the Lands Clauses Act, 1845, have power to enter upon the lands comprised in the notice to treat (*u*).

After such entry has been made, the owner, under section 68 or section 23, can take the initiative in instituting proceedings for the assessment of the value of the lands entered upon.

If the promoters are not desirous of entering upon lands until after the assessment of their value, and the payment or deposit of the amount, in accordance with the provisions of the Lands Clauses Act, 1845, then the first step, after giving a notice to treat, is to bring the question of value before the prescribed tribunal.

If the question is one for the decision of two justices, then (section 24) either party may apply for a summons ordering the other party to appear before the justices at a time and place mentioned in the summons (*x*).

If the question is one which the owner desires to have settled by arbitration, and which is within the authority of an arbitrator, then (section 25), unless a single arbitrator is agreed on, each party is required at the request of the other to appoint an arbitrator, and subsequent proceedings will follow in accordance with the provisions of the Lands Clauses Act, 1845 (*y*).

(*r*) *Ashton Vale Iron Co. v. Mayor, &c. of Bristol*, [1901] 1 Ch. 591; 70 L. J. Ch. 230.

(*s*) *Tawney v. Lynn and Ely Rail. Co.* (1847), 16 L. J. Ch. 282; cf. *Barker v. North Staffordshire Rail. Co.* (1848), 2 De G. & S. 55.

(*t*) *Errington v. Metropolitan District Rail. Co.* (1882), 19 Ch. D. 559; 51 L. J. Ch. 305.

(*u*) *Post*, p. 89.

(*x*) *Post*, p. 181.

(*y*) *Post*, p. 185.

If the question is one for decision by a jury, the initiative cannot directly be taken by the owner, and there is no provision for summoning a jury except by the issue of the warrant of the promoters (sections 23, 38) (z).

If promoters refuse to issue the warrant for summoning a jury, the owner is entitled, after the lapse of a reasonable time, to apply for a mandamus ordering the promoters to take all necessary steps, in accordance with the provisions of their incorporating Acts, for the purpose of assessing compensation (a). Compelling promoters to proceed.

Since the Common Law Procedure Act, 1854 (section 68) (b), an action for a mandamus to compel the promoters to issue their warrant to a sheriff for summoning a jury can be maintained (c) independently of any other mode of relief.

The issue of a mandamus is within the discretion of the Court ; and in *Tiverton, &c. Rail. Co. v. Loosemore* (d), Lord Blackburn intimated that this discretion might not be exercised in favour of a landowner who improperly delayed his application till the company could make no use of the land (e). It is no answer to an action for a mandamus that the whole amount of capital has not been subscribed as required by section 16 of the Lands Clauses Act, 1845, since the notice to treat is not necessarily an exercise of the powers of this Act in relation to the compulsory taking of land (f). Nor is it any answer that the time prescribed for the exercise of the compulsory powers has expired before the application for the mandamus (g), if the notice to treat has been given within the prescribed time.

An owner is not, however, entitled to relief on equitable grounds where a notice to treat has been given him, and the promoters take Equitable remedies of owner.

(z) *Post*, p. 206.

(a) *R. v. Hungerford Market Co.* (1832), 4 B. & Ad. 327.

(b) The procedure is now governed by R. S. C., O. LIII. *Vide post*, p. 207.

(c) *Fotherby v. Metropolitan Rail. Co.* (1867), L. R. 2 C. P. 188; 36 L. J. C. P. 88; *Morgan v. Metropolitan Rail. Co.* (1868), L. R. 4 C. P. 97; 38 L. J. C. P. 87; cf. *R. v. Manley Smith, In re Church and London School Board* (1892), 67 L. T. 197.

(d) (1884), 9 App. Cas. 480, at p. 497; 53 L. J. Ch. 812.

(e) Cf. *Ex parte Quicke* (1864), 12 L. T. 580.

(f) *Guest v. Poole, &c. Rail. Co.* (1870), L. R. 5 C. P. 553; 39 L. J. C. P. 329; cf. *In re Uxbridge and Rickmansworth Rail. Co.* (1890), 43 Ch. D. 536; 59 L. J. Ch. 409.

(g) *Birmingham, &c. Rail. Co. v. R.* (1851), 15 Q. B. 647, n.; 20 L. J. Q. B. 304.

no further steps (*h*). The principle is that the right to compensation under the Act is given as the sole remedy, and that the landowner has no option to repudiate the right to compensation and recover the land (*i*). It is different where, under all the circumstances, an equity has been created in the owner's favour, because then the High Court will order the promoters to take all subsequent steps necessary for enforcing the owner's equity (*k*).

Injunction
not granted
to try right to
compensation.

Conversely, when the promoters have given a notice to treat, and the person who has received it claims compensation, the promoters cannot by injunction or other procedure restrain the proceedings for the purpose of trying the question whether or not there is a right to compensation (*l*).

(*h*) *Lind v. Isle of Wight Ferry Co.* (1862), 7 L. T. 416; *Adams v. London and Blackwall Rail. Co.* (1850), 19 L. J. Ch. 557.

(*i*) *Tiverton, &c. Rail. Co. v. Loosemore* (1884), 9 App. Cas. 480, at p. 491, *per* Cairns, L. C.; 53 L. J. Ch. 812; *Webb v. Direct London and Portsmouth Rail. Co.* (1851), 1 De G. M. & G. 521; *Lind v. Isle of Wight Ferry Co.* (1862), 7 L. T. 416.

(*k*) *Baker v. Metropolitan Rail. Co.* (1862), 32 L. J. Ch. 7; *Inge v. Birmingham, &c. Rail. Co.* (1853), 3 De G. M. & G. 658.

(*l*) *East and West India Dock Co. v. Gattke* (1851), 20 L. J. Ch. 217; *North London Rail. Co. v. Great Northern Rail. Co.* (1883), 11 Q. B. D. 30; 52 L. J. Q. B. 380; *London and Blackwall Rail. Co. v. Cross* (1886), 31 Ch. D. 354; 55 L. J. Ch. 313; *cf. Sutton Harbour Improvement Commissioners v. Hitchens* (1851), 21 L. J. Ch. 73; *Birmingham and District Land Co. v. L. & N. W. Rail. Co.* (1887), 36 Ch. D. 650; (1888), 40 Ch. D. 268 (C. A.).

CHAPTER VII.

ENTRY ON LANDS BEFORE PURCHASE.

SECTIONS 84—91 of the Lands Clauses Act, 1845, contain the provisions which apply with respect to the entry on lands by promoters of the undertaking. Such entry, on lands which are required to be purchased or permanently used by the promoters, is rendered expressly unlawful (*a*), except by consent of the owners and occupiers or until after the promoters shall either have paid to every party having any interest in such lands, or deposited in the bank (*b*), the purchase-money or compensation agreed or awarded to be paid to such parties respectively for their respective interests. There are, however, two exceptions to this general enactment.

Entry on lands before payment or deposit of purchase-money.

By consent.

Promoters may, under section 84, without previous consent, enter on lands for the purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil, and of setting out the line of the works, after giving not less than three, nor more than fourteen, days' notice to the owners or occupiers—making compensation for any damage thereby occasioned to the owners or occupiers. Where a company had entered without giving the notice required under section 84, but stating that they did not intend to proceed any further without giving the required notice, the Court refused an injunction, making no order on the motion and reserving the costs (*c*).

For purpose of surveying.

The second exception is that where lands are required for permanent uses, the promoters may enter after complying with all the requirements contained in sections 85—88.

For permanent use.

An entry on lands under the provisions of sections 85—88 is not a putting in force of the powers of the Lands Clauses Act, or of the special Act in relation to the compulsory purchase or taking of

(*a*) Cf. *Birmingham and District Land Co. v. London and North Western Rail. Co.* (1888), 40 Ch. D. 268.

(*b*) Cf. *Bygrave v. Metropolitan Board of Works* (1886), 32 Ch. D. 147; 55 L. J. Ch. 602.

(*c*) *Fooks v. Wilts, &c. Rail. Co.* (1846), 5 Hare, 199.

lands (*d*). Hence, an owner cannot claim an injunction to prevent such entry on the ground that the capital of the company has not been duly subscribed under section 16 of the Lands Clauses Act, 1845 (*e*).

The words in section 85 giving a right of entering upon and using lands were fully considered in *Tiverton, &c. Rail. Co. v. Loosemore* (*f*), and it was held that the power of using was not a limitation on the power of entry, and that the power of entering and using was equivalent to a power to the company to convert to their own use, and that where the entry had originally been lawful the right of the company did not cease at the end of the five years limited for the completion of the works of the undertaking.

Penalties.

Sections 89, 90, give special penalties, recoverable by proceedings before a court of summary jurisdiction, if the promoters wilfully enter on lands required to be purchased or permanently used, without compliance with the provisions of the Lands Clauses Acts and their special Acts. On the other hand promoters are protected if under a *bonâ fide* mistake they have omitted to deal with some interest before entry (*g*).

Consent cannot be revoked.

A consent to permit the promoters to enter on any lands cannot be revoked when once given, so as to place the promoters in the position of trespassers. The effect of such consent is to bring the promoters under the protection of their statutory powers, and the only remedy of the owner is to take the necessary steps to compel the assessment and payment of compensation (*h*). If no consent has been given, and the promoters have not complied with the statutory conditions as to entry on lands, they can be proceeded against as trespassers by any owner who has an interest in the lands (*i*). The principle is that all statutory conditions which

If no consent given, promoters are trespassers.

(*d*) *Marquis of Salisbury v. Great Northern Rail. Co.* (1852), 17 Q. B. 840; 21 L. J. Q. B. 185.

(*e*) *Great Western Rail. Co. v. Swindon, &c. Rail. Co.* (1884), 9 App. Cas. 787; 53 L. J. Ch. 1075; cf. *Ford v. Plymouth, &c. Rail. Co.*, (1887) W. N. 201.

(*f*) (1884), 9 App. Cas. 480; 53 L. J. Ch. 812. The position of an easement in this connection is identical with the position of a freehold: *Midland Rail. Co. v. Great Western Rail. Co.*, [1909] A. C. 445.

(*g*) Ss. 124—126, *ante*, p. 68.

(*h*) *Knapp v. London, Chatham and Dover Rail. Co.* (1863), 32 L. J. Ex. 236; *Doe d. Hudson v. Leeds and Bradford Rail. Co.* (1851), 20 L. J. Q. B. 486.

(*i*) *Ramsden v. Manchester, &c. Rail. Co.* (1848), 1 Ex. 723; *Armstrong v. Waterford and Limerick Rail. Co.* (1846), 10 Ir. Eq. Rep. 60; *University Life Assurance Society v. Metropolitan Rail. Co.*, (1866) W. N. 167; *Rogers v. Hull Dock Co.* (1864), 11 L. T. 42, 463; *R. v. Bristol and Exeter Rail. Co.*

have been imposed as conditions precedent to an entry on lands must be fulfilled (*k*). In such cases, however, an injunction to restrain the promoters from continuing in possession will not be granted in the first instance, if the promoters have entered on lands through an unintentional error, and undertake to comply with conditions which will give the owner all the security to which he is entitled (*l*). An injunction was not granted where the company entered into a bond which, though not made under the Lands Clauses Acts, was accepted by the plaintiffs as sufficient (*m*). So, too, where an owner has stood by and allowed a railway company to enter on his lands, he is not entitled to an injunction against them (*n*). In another case (*o*), the promoters had entered on lands for the purpose of surveying and setting out the line of works, without giving the notice required under section 84, and the owner did not discover this until such survey had been made, whereupon he filed a bill for an injunction. The injunction was refused on an affidavit of the promoters, that they had no further occasion to enter on the lands in question until they had taken all necessary legal steps. An action for the recovery of such lands from the promoters can be commenced at any time after entry, unless the omission to deal with the interest of the owner affected has arisen from *bonâ fide* mistake, in which case the provisions of section 124 apply, and six months' time is given to promoters who do not dispute the question of title (*p*).

Injunction.

Action for recovery of lands.

Where no agreement has been made for purchase and no valid notice to treat has been given in the terms of section 18, the pro-

(1838), 11 A. & E. 202 (n.); *Hutchinson v. Manchester, &c. Rail. Co.* (1846), 15 L. J. Ex. 293; *Birmingham and District Land Co. v. London and North Western Rail. Co.* (1888), 40 Ch. D. 268; *In re Doyné's Traverses* (1889), 24 L. R. Ir. 287.

(*k*) *Parkdale Corporation v. West* (1887), 12 App. Cas. 602, 614; 56 L. J. P. C. 66; *North Shore Rail. Co. v. Pion* (1889), 14 App. Cas. 612; cf. *Jones v. Stanstead Rail. Co.* (1872), L. R. 4 P. C. 98; 41 L. J. P. C. 19.

(*l*) *Alston v. Eastern Counties Rail. Co.* (1855), 1 Jur. N. S. 1009; *Willey v. South Eastern Rail. Co.* (1849), 18 L. J. Ch. 201; *Williams v. South Wales Rail. Co.* (1849), 3 De G. & Sm. 354; *Jones v. Great Western Rail. Co.* (1840), 1 Rail. Cas. 684.

(*m*) *Birmingham and District Land Co. v. London and North Western Rail. Co.* (1887-8), 36 Ch. D. 650; 40 Ch. D. 268.

(*n*) *Greenhalgh v. Manchester and Birmingham Rail. Co.* (1838), 8 L. J. Ch. 75; *Langford v. Brighton, Lewes, &c. Rail. Co.* (1845), 4 Rail. Cas. 69.

(*o*) *Fooks v. Wilts, &c. Rail. Co.* (1846), 5 Hare, 199.

(*p*) *Jolly v. Wimbledon and Dorking Rail. Co.* (1861), 31 L. J. Q. B. 95.

motors cannot proceed under section 85 to enter upon and use lands against the objection of the owner (*q*).

Where the promoters have entered into an agreement to purchase, and have not adopted the provisions of sections 76, 85, the High Court will not give them possession by interlocutory order in an action for specific performance of the agreement to purchase (*r*).

Easements.

Interference with an easement is in its nature different to a trespass by entering on lands; and sections 84—90 do not apply (*s*). Promoters acting within their powers cannot be restrained by injunction from interfering with an easement; but the owner, after damage has been sustained, is entitled to proceed under section 68, and to have the amount of damage assessed (*t*). The case of the compulsory creation of an easement (*u*) must be carefully distinguished from the case of interference with an existing easement.

Where under the terms of a special Act powers were given enabling the company to compel the creation of an easement, an entry on lands for the purpose of creating such easement was held to be within the provisions of sections 84—90 (*x*), and a deposit under section 85 must be made in the usual way (*y*); the amount of such deposit should be the value of the easement which the company have power to create (*y*). Although it is impossible to enter upon an easement which it is intended to create, the land over which it is to be created can be entered upon (*z*).

(*q*) *Ramsden v. Manchester, &c. Rail. Co.* (1848), 1 Ex. 723; cf. *Tiverton, &c. Rail. Co. v. Loosemore* (1884), 9 App. Cas. 480; 53 L. J. Ch. 812; *Great Western Rail. Co. v. Swindon, &c. Rail. Co.* (1884), 9 App. Cas. 787; 53 L. J. Ch. 1075; *Ford v. Plymouth, &c. Rail. Co.*, (1887) W. N. 201.

(*r*) *Bygrave v. Metropolitan Board of Works* (1886), 32 Ch. D. 147; 55 L. J. Ch. 602.

(*s*) *Vide ante*, pp. 12—16.

(*t*) *Macey v. Metropolitan Board of Works* (1864), 33 L. J. Ch. 377; *Clark v. London School Board* (1874), L. R. 9 Ch. 120; 43 L. J. Ch. 421; *Duke of Bedford v. Dawson* (1875), L. R. 20 Eq. 353; 44 L. J. Ch. 549; *Bush v. Trowbridge Waterworks Co.* (1875), L. R. 19 Eq. 291; 10 Ch. 459; 44 L. J. Ch. 235, 645; *Wigram v. Fryer* (1887), 36 Ch. D. 87, 96; 56 L. J. Ch. 1098; *Emsley v. North Eastern Rail. Co.*, [1896] 1 Ch. 418; 65 L. J. Ch. 385; *Courage & Co. v. South Eastern Rail. Co.* (1902), 19 Times L. R. 61.

(*u*) *Ante*, p. 16.

(*x*) *Great Western Rail. Co. v. Swindon, &c. Rail. Co.* (1884), 9 App. Cas. 787; 53 L. J. Ch. 1075.

(*y*) *Hill v. Midland Rail. Co.* (1882), 21 Ch. D. 143; 51 L. J. Ch. 774; *Great Western Rail. Co. v. Swindon, &c. Rail. Co.* (1884), 9 App. Cas. 787; 53 L. J. Ch. 1075.

(*z*) *S. C.* at p. 811, *per* Lord Bramwell.

Sections 85—88 have been held not to apply to a public authority entering to make a sewer (*a*). Where a company was empowered to appropriate and use the sub-soil and under-surface without taking the whole of the land, it was held that the company were taking not merely an easement, and that they could not appropriate and use the sub-soil without first complying with the provisions applicable to the purchase of land (*b*).

Sections 84—90 do not apply, except where the promoters enter on lands which they require either for permanent user, or for the purposes merely of surveying and similar objects contained in the proviso to section 84; and an entry for the purpose of some merely temporary use is not within their provisions (*c*). What constitutes permanent user.

Entry on lands with the consent of the tenant, in order to deposit certain plant, is not entry for a permanent user, and does not entitle an owner to claim an injunction (*d*).

It is not a permanent user of lands to alter and divert a pier temporarily, yet so as not to interrupt all the use thereof, where it is proposed eventually to build, as nearly as may be, a new pier in the place of the old one (*e*). The opening of a new footpath over lands does amount to a permanent user, because it is essential to become owner of lands before having power to grant over them such a right (*f*).

In *Field v. Carnarvon and Llanberis Rail. Co.* (*g*), Malins, V.-C., says: "I am of opinion that no railway company has a right to proceed under section 85 of the Lands Clauses Consolidation Act, 1845, unless there is an urgent necessity for immediate entry on the lands." It does not appear on what words in the 85th section this opinion is based (*h*), and there is no reason why the entry should not take place at any time before the expiration of

(*a*) *North London Rail. Co. v. Metropolitan Board of Works* (1859), 28 L. J. Ch. 909; cf. *In re Corporation of Dudley* (1881), 8 Q. B. D. 86, 96, per Cotton, L. J.; 51 L. J. Q. B. 121.

(*b*) *Farmer v. Waterloo and City Rail. Co.*, [1895] 1 Ch. 527; 64 L. J. Ch. 338; cf. *Metropolitan Rail. Co. v. Fowler*, [1893] A. C. 416; 62 L. J. Q. B. 553.

(*c*) *Vide ante*, p. 33.

(*d*) *Standish v. Mayor, &c. of Liverpool* (1852), 1 Drew. 1.

(*e*) *Temple Pier Company v. Metropolitan Board of Works* (1865), 34 L. J. Ch. 262.

(*f*) *Rangeley v. Midland Rail. Co.* (1868), L. R. 3 Ch. 306; 37 L. J. Ch. 313.

(*g*) (1867), L. R. 5 Eq. 190; 37 L. J. Ch. 176.

(*h*) Cf. *Willey v. South Eastern Rail. Co.* (1849), 18 L. J. Ch. 201; and *Loosemore v. Tiverton, &c. Rail. Co.* (1882), 22 Ch. D. 25, per Fry, J., at p. 39, and per Selborne, L. C., at p. 46; 52 L. J. Ch. 260.

the time for the completion of the works of the undertaking, provided it is *bonâ fide* and the lands are *bonâ fide* required (*i*).

Where a notice to treat has been given and an entry made under section 85, there is a taking of the land and the owner is entitled to costs under section 80 (*k*).

Procedure.

The following is the procedure laid down by sections 84—91 in the case of an entry on lands before purchase :—

Deposit by way of security.

The promoters are required in the first place to deposit in the bank by way of security either the amount of purchase-money or compensation claimed by any party interested in or entitled to sell and convey lands, and who does not consent to entry on such lands (*l*), or such a sum as shall, by a surveyor appointed by two justices (or in the case of railways by the Board of Trade (*m*)), be determined to be the value of such lands, or of the interest therein which such party is entitled to or enabled to sell and convey (*n*).

In respect of all lands comprised in notice to treat;

The lands of which the value is to be assessed and deposited by way of security are “all lands of the same owner comprised in the notice to treat,” and it is not competent for the promoters to enter on a portion of the lands specified in the notice to treat, unless they deposit security for the whole (*o*). But where an award has been made that the part required can be severed without material detriment to the rest, it has been held in Ireland that it is not necessary to deposit the value of the whole land even where the award is disputed (*p*). Where a counter-notice has been given under section 92, requiring the promoters to take the whole of a house or other building or manufactory, the deposit by way of

—or in counter-notice under s.92.

(*i*) *Tiverton, &c. Rail. Co. v. Loosemore* (1884), 9 App. Cas. 480; 53 L. J. Ch. 812.

(*k*) *Charlton v. Rolleston* (1884), 28 Ch. D. 237; 54 L. J. Ch. 233.

(*l*) Where the lands taken are mortgaged, entry on the lands may be made before notice to the mortgagee, but such entry does not in any way affect the rights between the promoters and the mortgagee, merely putting the promoters in the position of having taken possession with the consent of the mortgagor: *Cooke v. L. C. C.*, [1911] 1 Ch. 604.

(*m*) Railway Companies Act, 1867, s. 36.

(*n*) S. 85.

(*o*) Cf. *R. v. London and South Western Rail. Co.* (1848), 12 Q. B. 775; *R. v. London and Greenwich Rail. Co.* (1843), 3 Q. B. 166; *R. v. Sheriff of Middlesex, Re Walker and London and Blackwall Rail. Co.* (1842), 3 Q. B. 744; *Stone v. Commercial Rail. Co.* (1839), 9 Sim. 621; *Barker v. North Staffordshire Rail. Co.* (1848), 2 De G. & Sm. 55; *Hill v. Midland Rail. Co.* (1882), 21 Ch. D. 143; 51 L. J. Ch. 774.

(*p*) *Lambert v. Dublin, &c. Rail. Co.* (1890), 25 L. R. Ir. 163.

security must include the value of the whole house or other building or manufactory (*q*).

In assessing the amount of the deposit, a surveyor should take into consideration not only the actual value of the lands taken, but also the amount of compensation to which an owner is entitled in respect of lands held therewith. The amount assessed by a surveyor is an alternative to the amount of purchase-money or compensation claimed by the owner, and the bond required to be given by the promoters is conditioned for payment to the owner, or deposit in the bank, of such purchase-money or compensation as may be determined to be payable (*r*). So long as the assessment is honestly made on the proper basis, the Court will not interfere on the ground of inadequacy of amount (*s*); but the Court will interfere where a surveyor has made his valuation in such a manner as not to enable him to do it fairly (*t*).

Deposit to include compensation for injury to lands.

In the case of railways, the amount assessed should not include minerals, unless a railway company intends to enter on the sub-soil. The whole question of compensation for minerals is separately dealt with under sections 77—85 of the Railways Clauses Act, 1845 (*u*). In the case of undertakings other than railways, and to which no special provisions apply, the promoters, even when they do not actually purchase the sub-soil, yet obtain a right to adjacent and subjacent support from the neighbouring lands of the same owner, in reference to the purposes for which they have purchased the surface lands (*x*). The general law as to the right of support of the surface against the owner of the mines and minerals

Not to include minerals, unless it is intended to purchase them.

(*q*) *Giles v. London, Chatham and Dover Rail. Co.* (1861), 30 L. J. Ch. 603.

(*r*) Cf. *Field v. Carnarvon and Llanberis Rail. Co.* (1867), L. R. 5 Eq. 190; 37 L. J. Ch. 176; and in the case of railways, Railway Companies Act, 1867, s. 36, sub-s. 3.

(*s*) *River Roden Co. v. Barking U. D. C.* (1902), 18 Times L. R. 542, 608.

(*t*) *Cotter v. Metropolitan Rail. Co.* (1864), 10 L. T. 777.

(*u*) *Ex parte Neath and Brecon Rail. Co.* (1876), 2 Ch. D. 201; 45 L. J. Ch. 196; *vide infra*, pp. 127—138.

(*x*) *Caledonian Rail. Co. v. Sprot* (1856), 2 Jur. N. S. 623; *Elliot v. North Eastern Rail. Co.* (1863), 10 H. L. C. 333; 32 L. J. Ch. 402; *London and North Western Rail. Co. v. Evans*, [1893] 1 Ch. 16; 62 L. J. Ch. 1; *Great Western Rail. Co. v. Cefn Cribbwr Brick Co.*, [1894] 2 Ch. 157; 63 L. J. Ch. 500; *Glamorganshire Canal Co. v. Nixon's Navigation Co.* (1901), 85 L. T. 53; *Clippens Oil Co. v. Edinburgh, & Co. Water Trustees*, [1904] A. C. 64; 73 L. J. P. O. 32; *North British Rail. Co. v. Turners, Ltd.* (1904), 6 F. (Ct. of Sess.) 900.

is outside the scope of this treatise (*y*) but it would be a question, in considering the amount to be deposited, how far the right to subjacent and adjacent support might interfere with the customary power of working mines. If a railway company, or any other company, enter upon, or give notice of intention to take, mines or minerals for the purpose of carrying out their works, their value must be assessed and deposited in the same way as the value of the surface lands.

Surveyor appointed on *ex parte* application.

Not in case of railways.

Under the Lands Clauses Act promoters can proceed *ex parte* before the justices for the appointment of a surveyor (*z*); but section 36 of the Railway Companies Act, 1867, expressly provides that railway companies shall give notice of their intention to apply to the Board of Trade for the appointment of a surveyor. The surveyor appointed should not be the surveyor of the promoters; but such an appointment is not a ground for an injunction (*a*).

How deposit is to be made.

The money to be deposited should be paid into the Bank of England (Law Courts Branch) in the name and with the privity of the paymaster-general, to be placed to his account there to the credit of the parties interested in or entitled to sell and convey the lands entered upon, and is subject to the control and disposition of the Chancery Division of the High Court (*b*). The cashier of the bank is required to give a receipt for such money, specifying for what purpose and to whose credit it has been paid in (*c*). If the office of the paymaster-general is at any time closed, the money to be deposited may be paid into the bank to the appropriate credit (*d*).

Money may be paid in to "the account of the landowner" (*e*), and where it had been paid into a special bank at a landowner's request, and such bank had failed, it was held that the loss fell on the landowner (*f*).

(*y*) See such cases as *Dixon v. White* (1883), 8 App. Cas. 833; *Bell v. Earl Dudley*, [1895] 1 Ch. 182; 64 L. J. Ch. 291; *Butterknowle Colliery Co. v. Bishop Auckland Industrial Co-operative Co.*, [1906] A. C. 305.

(*z*) *Bridges v. Wilts. &c. Rail. Co.* (1847), 16 L. J. Ch. 335.

(*a*) *Langham v. Great Northern Rail. Co.* (1847), 16 L. J. Ch. 437.

(*b*) S. 86, as modified.

(*c*) S. 86.

(*d*) S. 88.

(*e*) *Poynder v. Great Northern Rail. Co.* (1847), 16 L. J. Ch. 444.

(*f*) *St. Paul v. Birmingham, &c. Rail. Co.* (1853), 11 Hare, 305.

The money, when deposited in the bank, is a security for the performance of the conditions of the bond which is required to be given by the promoters. The procedure on an application for the interim or permanent investment of or for payment of dividends in respect of such money, or for the payment out of such money, is dealt with in Chap. XVII. (g).

Money deposited is security for fulfilment of bond.

There is no power in the Court to which application is made to deal with the money deposited in any other way than is directed by the Lands Clauses Act, 1845, or the Settled Land Acts. In *Martin v. London, Chatham and Dover Rail. Co.* (h), Stuart, V.-C., transferred the money deposited by way of security under section 85 to a suit instituted by mortgagees, and ordered that it should stand as a security for their debt. This decision was reversed on appeal by Lord Cranworth, L. C., who said (i): "The 8,400*l.* was deposited upon the express contract, or express right, created by the statute, that it should stand as security for such sum as the jury should award to be sufficient compensation for the lands which the company should take, and I think that if it was transferred by arrangement into the name of the cause, the Court can have no more right to deal with that fund, so as to give it a different direction, than they could have had if it had stood *simpliciter* in the mode pointed out by the statute. Therefore I think that the Vice-Chancellor was clearly wrong in the conclusion at which he arrived."

Power of Court to deal with deposit.

Where the condition of the bond has been fulfilled, the Court will, on the application of the promoters, order the payment to them of the money deposited, and has no power to charge on the fund any costs which the promoters are liable to pay under section 80 (k), or may be liable to pay in incidental proceedings (l). The production of the bond is evidence that the condition has been fulfilled for the performance of which the bond was given (m). Where the

When condition is fulfilled.

(g) *Post*, p. 262.

(h) (1886), L. R. 1 Ch. 501; 35 L. J. Ch. 795; *In re Fooks* (1849), 2 Macn. & G. 357.

(i) At p. 505.

(k) *Ex parte Stevens* (1848), 13 Jur. 2; *In re Neath and Brecon Rail. Co.* (1874), L. R. 9 Ch. 263; 43 L. J. Ch. 277.

(l) *Ex parte Great Northern Rail. Co.* (1848), 16 Sim. 169; *Re Birmingham, Wolverhampton, &c. Rail. Co.* (1863), 1 H. & M. 772; *In re Wimbledon and Dorking Railway Act* (1863), 9 L. T. 703.

(m) *Re London and North Western Rail. Co.* (1872), 26 L. T. 687.

conditions of the bond have been satisfied, the company are entitled upon a petition by themselves and the obligee of the bond to have the money deposited repaid to them without proving that the purchase-money of the land has been paid to the persons really entitled to it (*n*). The costs of the vendors, appearing as respondents to consent, are not allowed (*o*) unless there are special circumstances (*p*), and the proceedings now take place at chambers under a summons (*q*).

The promoters are entitled to have the deposit paid out to them on an affidavit that the owner has received his purchase-money and costs under an agreement. As a rule the owner should join in the application, or a copy should be served on him (*r*). But service has been dispensed with where a considerable time has elapsed since the conveyance of the lands (*s*), or where the consent in writing of the vendor has been obtained (*t*).

When condition not fulfilled.

If the condition of the bond has not been fulfilled, the Court has a discretion to order the application of the money deposited, in such manner as it shall think fit, for the benefit of the parties for whose security it has been deposited. In this case an owner can apply for payment out of the fund in Court of costs due under section 80 (*u*). A petition (or summons) may be presented adversely to the company by whom the deposit has been made (*x*). If the value of the lands taken, and compensation, are assessed at an amount greater than the fund deposited for security, the difference has been ordered to be paid into Court (*y*). Where money has been wrongfully paid into Court on the valuation of a surveyor under sections 58, 59, the condition of the bond is not

(*n*) *Ex parte Midland Rail. Co.*, [1904] 1 Ch. 61; 73 L. J. Ch. 64.

(*o*) *In re Holman's Settlement*, (1877) W. N. 272.

(*p*) *Re Tottenham and Hampstead Junction Rail. Co.* (1866), 14 W. R. 669.

(*q*) R. S. C., O. LV r. 2 (1), (2), (7). *Vide post*, Chap. XVII., p. 262. Application may be by summons whatever the amount; particulars as to the affidavit required, &c. are set out in Annual Practice, 1922, pp. 969, 970.

(*r*) *In re South Wales Rail. Co.* (1851), 14 Beav. 418; *Ex parte Eastern Counties Rail. Co.* (1848), 5 Rail. Cas. 210.

(*s*) *In re Lancashire and Yorkshire Rail. Co.* (1886), 55 L. T. 58.

(*t*) *Ex parte Huddersfield Corporation, In re Dyson* (1882), 46 L. T. 730.

(*u*) *Ex parte Flower* (1866), L. R. 1 Ch. 599; 36 L. J. Ch. 193; *Ex parte Morris* (1871), L. R. 12 Eq. 418; 40 L. J. Ch. 543; cf. *Re Birmingham, Wolverhampton, &c. Rail. Co.* (1863), 1 H. & M. 772.

(*x*) *In re Mutlow's Estate* (1879), 10 Ch. D. 131; 48 L. J. Ch. 198.

(*y*) *Ashford v. London, Chatham and Dover Rail. Co.* (1866), 14 L. T. 787; *Ex parte London, Tilbury and Southend Rail. Co.* (1852), 1 W. R. 533.

fulfilled, and the money will not be repaid until the value of the land has been duly assessed by arbitration or a jury (z).

In addition to the security of the deposit, promoters are required, under section 85, to give to any party interested in or entitled to sell and convey the lands, on which entry has been made, a bond under their common seal, if they be a corporation, or if they be not a corporation, under the hands and seals of the promoters, or any two of them, with two sufficient sureties, to be approved of by two justices (or, in the case of railway companies, by the Board of Trade (a)), when the parties differ, in a penal sum equal to the sum so to be deposited, conditioned for payment to such party, or for deposit in the bank for the benefit of the parties interested, of all such purchase-money and compensation as may be determined to be payable by the promoters in respect of the lands so entered upon, together with interest thereon, at the rate of five pounds per centum per annum, from the time of entering on such lands until such purchase-money or compensation shall be paid to such party or deposited in the bank.

Bond required to be given by promoters.

The form of bond specified in the statute (b) should be exactly followed. Words inserted in the bond making the penalty payable "on demand" (c), or "at any time hereafter" (d), do not satisfy the provisions of the Act, and are grounds for an injunction. In *Hosking v. Phillips* (e), the bond was conditioned on payment or deposit, "or otherwise for the benefit of the parties," &c., and it was held that the introduction of the words "or otherwise" invalidated the bond.

Form of bond.

If the bond gives to any party the full protection contemplated by the section, and there is merely a formal variance, which does not in any way affect his interests, an objection to the validity of the bond will not be entertained.

In *Willey v. South Eastern Rail. Co.* (f), the bond was conditioned on payment to the plaintiff or his representatives only. This was held to be sufficient under the circumstances, and the injunction was refused.

(z) *Ex parte London and South Western Rail. Co.* (1869), 38 L. J. Ch. 527.

(a) Railway Companies Act, 1867, s. 36.

(b) *Vide infra*, Appendix, p. 413.

(c) *Poynder v. Great Northern Rail. Co.* (1847), 16 L. J. Ch. 444; *Langham v. Great Northern Rail. Co.* (1847), 16 L. J. Ch. 437.

(d) *Cotter v. Metropolitan Rail. Co.* (1864), 10 L. T. 777.

(e) (1848), 18 L. J. Ex. 1.

(f) (1849), 18 L. J. Ch. 201.

In case of
tenants in
common.

If there are tenants in common, a bond conditioned for payment to them, "their heirs, executors, administrators, or assigns," is irregular, and separate bonds should be given (*g*).

Approval of
sureties.

The approval of sureties is an *ex parte* proceeding before justices (*h*); but, in the case of railway companies, the Board of Trade approves or disapproves after hearing both sides (*i*). Provided that the authorized approval is given, the solicitors to the company may be appointed sureties (*k*).

Interest at
5 per cent.

The bond provides for payment of interest at the rate of five per centum per annum from time of entry until payment or deposit of purchase-money or compensation (*l*). The five per centum is payable on the amount of purchase-money or compensation, assessed in accordance with the provisions of the Lands Clauses Act, 1845, and is therefore payable on a sum recoverable under section 68, owing to the neglect of the promoters to issue their warrant within twenty-one days (*m*).

Effect of
entry on
lands under
s. 85.

After the deposit by way of security has been duly made, and the bond has been properly executed, it is lawful for the promoters to enter upon lands required to be purchased or permanently used. The effect of section 85 is not, however, to vest any lands in the promoters, and the owner's title is not divested. The power of entry is given as ancillary to, and for the purposes of, the other statutory powers; and after entry a company has nothing more than a possessory right, enabling it to utilize the lands entered upon for the purposes of their undertaking (*n*).

If notice to
treat given
within time
limited for
exercise of
compulsory
powers, entry
under s. 85
may be sub-
sequent.

It is settled law that the powers under section 85, even in the case of a compulsory purchase, are not compulsory powers, and that if notice to treat has been given within the time fixed for the exercise of compulsory powers for the purchase or taking of lands, subsequent proceedings can, after the expiration of such time, be taken in accordance with section 85.

(*g*) *Langham v. Great Northern Rail. Co.* (1847), 16 L. J. Ch. 437; *Daubney v. Manchester, &c. Rail. Co.* (1847), 10 L. T. (O. S.) 283.

(*h*) *Bridges v. Wilts, &c. Rail. Co.* (1847), 16 L. J. Ch. 335.

(*i*) Railway Companies Act, 1867, s. 36.

(*k*) *Langham v. Great Northern Rail. Co.* (1847), 16 L. J. Ch. 487.

(*l*) See *In re Baltimore Extension Rail. Co., Ex parte Daly*, [1895] 1 Ir. R. 169.

(*m*) *In re Aberdore Rail. Co.* (1860), 8 W. R. 603.

(*n*) See *Tiverton, &c. Rail. Co. v. Loosemore* (1884), 9 App. Cas. 480; 53 L. J. Ch. 812.



The case of *Doe d. Armistead v. North Staffordshire Rail. Co.* (o) decided that, where a company had taken possession under section 85 within the time limited for the exercise of compulsory powers for the purchase or taking of lands, they might continue in possession afterwards, although all the steps for completing their title had not been then taken.

The case of *Marquis of Salisbury v. Great Northern Rail. Co.* (p) decided that, if all steps had been taken under section 85, except actual entry on the lands, the company had power to enter after the expiration of the time limited for the exercise of compulsory powers for the purchase or taking of lands. This case was approved in the subsequent case of *Tiverton, &c. Rail. Co. v. Loosemore* (q), where it was held that where a notice to treat had been given within the time limited for the compulsory purchase of lands, an entry, *bonâ fide* made under section 85 by the railway company, thirteen days before the expiration of the time limited for the completion of the works, was justified, and that the transaction must go forward, either party being entitled to put in force the provisions of the Lands Clauses Acts for the purpose of completing the transaction.

The result of the cases is that, provided the promoters act *bonâ fide* and without laches, and give a notice to treat within the time limited for the exercise of the powers of compulsory purchase of lands, they may enter on such lands at any time before the expiration of the time limited for the completion of the works, and that the Court will not enter upon the inquiry whether, as a fact, sufficient time has been left for the completion of the works within the statutory limit.

Promoters, who have entered on lands in accordance with the provisions of section 85, are protected by their statutory powers, and no action for the recovery of such lands can be brought against them by the owner (r), either before or after the expiration of the statutory period limited for the completion of the authorized works (q). Such owners are not entitled to equitable relief, but

No action against promoters who have complied with s. 85 of L. Cl. Act, 1845.

(o) (1851), 20 L. J. Q. B. 249; cf. *Worsley v. South Devon Rail. Co.* (1851), 20 L. J. Q. B. 254.

(p) (1852), 21 L. J. Q. B. 185.

(q) *Tiverton, &c. Rail. Co. v. Loosemore* (1884), 9 App. Cas. 480; 53 L. J. Ch. 812.

(r) *Doe d. Armistead v. North Staffordshire Rail. Co.* (1851), 20 L. J. Q. B. 249; *Doe d. Hudson v. Leeds and Bradford Rail. Co.* (1851), 20 L. J. Q. B. 486; *Worsley v. South Devon Rail. Co.* (1851), 20 L. J. Q. B. 254.

Owner not entitled to equitable relief.

must avail themselves of the procedure provided in sections 22, 68 and 121 of the Lands Clauses Act, 1845 (*s*). If the promoters do not strictly comply with all the requirements of section 85, they are in the position of trespassers, and can be proceeded against as such (*t*); and the High Court has power, on the trial of an action for wrongful entry, to make a declaration as to the plaintiff's interest in the lands in question instead of remitting the matter to be dealt with under the Lands Clauses Acts (*u*).

Remedy of owner after value of lands has been fixed.

When lands have been entered upon, and their value assessed or agreed, the owner is in the position of an ordinary unpaid vendor, and the Court will enforce his lien by sale and the appointment of a receiver (*x*), or by injunction restraining the undertakers from using the land if it turns out to be unsaleable, even though the railway has been made on the land, and has been opened for public use (*y*). This lien on the land is both for the purchase-money and also for money payable to the owner as compensation for damage by severance and injury to his adjoining land, unless such compensation is the subject of a separate agreement between him and the company (*z*).

Power of owner to compel assessment of lands entered upon.

Sections 22, 68 and 121 of the Lands Clauses Act, 1845, afford full protection to an owner whose lands have been entered upon, and the power of initiating proceedings to assess the value of such lands is in the hands of the owner.

Compensation assessed by two justices.

Where the compensation claimed does not exceed 50*l.* (*a*), or is in respect of a tenancy not greater than for a year, or from year to year (*b*), the amount is to be assessed by two justices. Section 24 enables either party to initiate proceedings before two justices (*c*).

(*s*) *Tiverton, &c. Rail. Co. v. Loosemore*, *supra*; *Adams v. London and Blackwall Rail. Co.* (1850), 19 L. J. Ch. 557. Where there is an original equity affecting the owner, the L. Cl. Act, 1845, does not take it away: *Duke of Norfolk v. Tennant* (1852), 9 Hare, 746.

(*t*) *Perks v. Wycombe Rail. Co.* (1862), 3 Giff. 662.

(*u*) *Birmingham and District Land Co. v. London and North Western Rail. Co.* (1888), 36 Ch. D. 650; 40 Ch. D. 268.

(*x*) *Munns v. Isle of Wight Rail. Co.* (1870), L. R. 5 Ch. 414; 39 L. J. Ch. 522.

(*y*) *Williams v. Aylesbury, &c. Rail. Co.* (1873), 28 L. T. 547; *Allgood v. Merrybent, &c. Rail. Co.* (1886), 33 Ch. D. 571; 55 L. J. Ch. 743.

(*z*) *Walker v. Ware, &c. Rail. Co.* (1866), L. R. 1 Eq. 195; 35 L. J. Ch. 94; *Wing v. Tottenham, &c. Rail. Co.* (1868), L. R. 3 Ch. 740; 37 L. J. Ch. 654; *Munns v. Isle of Wight Rail. Co.* (1870), L. R. 5 Ch. 414; 39 L. J. Ch. 522.

(*a*) S. 22.

(*b*) S. 121.

(*c*) *Id*e post, p. 181.

In all cases which are not comprised under sections 22 and 121, the owners of lands entered upon by the promoters can proceed under section 68.

Under this section, the owner is entitled to have the amount of Arbitration. compensation settled either by arbitration or by the verdict of a jury. If the owner desire to have the compensation settled by arbitration, it is lawful for him to give notice in writing to the promoters of his desire, stating in such notice the nature of his interest in the land in respect of which he claims compensation, and the amount of compensation which he claims. Unless the promoters are willing to pay the amount of compensation claimed, and to enter into a written agreement for that purpose within twenty-one days after the receipt of such notice, the same is settled by arbitration in the manner provided by the Act (*d*). It is material to observe that, where the promoters decline to act, all steps necessary for the assessment of compensation by arbitration can be initiated and carried through by the owner.

If the owner desires to have the amount of compensation settled Jury. by a jury, it is lawful for him to give notice in writing of his desire to the promoters, stating in such notice the nature of his interest in the land in respect of which he claims compensation, and the amount of compensation which he claims (*e*). Unless the promoters are willing to pay the amount of compensation claimed, and enter into a written agreement for that purpose, they are required, within twenty-one days after the receipt of such notice, to issue their warrant to the sheriff to summon a jury for settling the same in the manner provided in the Lands Clauses Act, 1845 (*f*). In default of issuing their warrant, the promoters become liable to pay to the owner the amount of compensation which he claims; and the same may be recovered by him, with costs, by action in any of the superior Courts (*g*).

The Lands Clauses Act, 1845, has no machinery which enables the owner to issue his warrant to the sheriff for summoning a jury; but section 68 makes promoters, who have entered on lands, liable to pay the whole amount which the owner claims, unless, in compliance with his request, they take the necessary steps for summoning a jury within twenty-one days (*g*).

(*d*) *Vide post*, p. 185.

(*e*) S. 23.

(*f*) Ss. 39—50.

(*g*) *Vide post*, p. 208.

There must be an actual entry on lands for s. 68 to apply.

An owner can only bring an action for the amount claimed on failure of the promoters to summon a jury, where there has been an entry on lands, and not where there has been a notice to treat given without entry (*h*). "Taking" in section 68 means actual taking, as distinct from serving a notice to treat, or any other kind of constructive taking (*i*). The appropriation and user of subsoil under a special Act has been held to be equivalent to a taking of lands (*k*).

In *Barker v. Metropolitan Rail. Co.* (*l*), the company entered into arrangements with the tenant of premises and received from him the key. The lessor gave the company notice of the amount of his claim, and of the nature of his interest in the premises, and required them to issue their warrant to summon a jury, and, upon their neglecting to do so, brought an action for the amount claimed. It was held that these facts warranted the jury in finding, that the company had actually taken the premises, and, consequently, that they were liable for the amount claimed.

Where there has been actual entry, owner can proceed under s. 68.

If lands have been entered on by the promoters for the purposes of permanent user, the owner can elect to proceed under section 68, although the entry has been irregular, provided that it is not *ultra vires*.

This principle is analogous to that adopted in the case of *R. v. South Holland Drainage Committee* (*m*). It was held in this case that the not receiving a notice to treat was an irregularity which could be waived by acquiescence; and it was further held that the party, who by his conduct had conduced to such irregularity, could not afterwards be heard to complain of it. Lord Denman says in his judgment, "The ground of my decision is, that this party is not competent to make the objections which he now brings before me." But where a plaintiff did not know the plans of the Commissioners of Sewers until after the negotiations were at an end, it was held that he was not estopped from disputing the validity of the notice under which the Commissioners claimed

(*h*) *Burkinshaw v. Birmingham and Oxford Junction Rail. Co.* (1850), 20 L. J. Ex. 246; *R. v. Manley Smith, In re Church and London School Board* (1892), 67 L. T. 197.

(*i*) *Spencer v. Metropolitan Board of Works* (1882), 22 Ch. D. 142, at p. 173, *per* Bowen, L. J.; 52 L. J. Ch. 249.

(*k*) *Farmer v. Waterloo and City Rail. Co.*, [1895] 1 Ch. 527; 64 L. J. Ch. 338; cf. *Metropolitan Rail. Co. v. Fowler*, [1893] A. C. 416; 62 L. J. Q. B. 553.

(*l*) (1864), 17 O. B. N. S. 785.

(*m*) (1838), 8 A. & E. 429.

to take his property (*n*) ; and the case is different where the notice to treat is irregular and invalid, through being served on an agent not authorized by the owner to accept service (*o*).

Section 89 of the Lands Clauses Act, 1845, enacts, that if promoters wilfully enter and take possession of lands required to be purchased or permanently used, without the consent of the owner (*p*), before payment or deposit of purchase-money, they shall forfeit to the party in possession of such lands the sum of 10*l.*, in addition to the damage they have caused, and that such penalty and damage can be recovered before two justices ; and further, that if the promoters continue in unlawful possession after conviction in the aforesaid penalty, they shall be liable to forfeit 25*l.* per day, recoverable by action in any of the superior Courts. There is a proviso that promoters shall not be subject to the above penalties if they have *bonâ fide* and without collusion paid the compensation agreed or awarded to any person whom they reasonably believed to be entitled thereto, or have deposited it in the bank for the benefit of the parties interested in the lands, or made such deposit by way of security in respect thereof as thereinbefore (section 85) mentioned, although such person may not have been legally entitled thereto.

Section 90 provides that, in an action for the recovery of the penalty of 25*l.* per day, the decision of the justices as to the right of entry by the promoters shall not be conclusive.

An entry is "wilful," within section 89, when there is an absence of honest belief, on the part of the promoters, of the existence of conditions which would perfect their right of entry. Where a company had entered on lands after a valuation made by a surveyor appointed by two justices, one of whom was a shareholder in the company, but this was not known, it was held that this irregularity did not make the company liable as for a wilful entry (*q*).

In the case of *Hutchinson v. Manchester, &c. Rail. Co.* (*r*), it was decided, on the terms of a section in the special Act, which differed in certain respects from those of section 89 of the Lands

(*n*) *Lynch v. Commissioners of Sewers* (1886), 32 Ch. D. 72; 55 L. J. Ch. 409.

(*o*) *Shepherd v. Corporation of Norwich* (1885), 30 Ch. D. 553; 54 L. J. Ch. 1050.

(*p*) S. 84.

(*q*) *Steele v. Midland Rail. Co.* (1869), 21 L. T. 387.

(*r*) (1846), 15 L. J. Ex. 293.

Clauses Act, 1845, that a continuance in possession might be unlawful and render the company liable to penalties, although the original entry had not been wilful. This case is important in its general bearing, because the section giving a penalty for the continuance of unlawful possession of lands by the company contained a proviso similar to that in the Lands Clauses Act, 1845, section 89, exempting the company from such penalty, where the money had been paid or deposited *bonâ fide* and without collusion ; and it was held, that the proviso should be construed liberally, and that it applied where money had been honestly deposited, although in fact such deposit had not been made in accordance with the requirements of the special Act.

CHAPTER VIII.

COMPENSATION FOR LANDS PURCHASED.

WHEN a notice to treat has been given, or the promoters have entered on lands under section 85 of the Lands Clauses Act, 1845, the owner and the promoters have to consider on what basis the claim for compensation should be assessed, in order that the amount may be settled by agreement or the determination of a competent tribunal.

Basis of claim for compensation.

It must be borne in mind that promoters have no powers, other than those comprised in their special Acts and the Acts therewith incorporated, to enter upon or take lands against the wish of the owners. It is incumbent on promoters to comply with all conditions and limitations imposed upon them, and, unless they have so complied, any interested owner can restrain them by injunction from taking, as against him, further proceedings (*a*). The owner cannot compel the promoters to proceed on an invalid notice to treat (*b*).

Proceedings restrained if conditions imposed not complied with.

It has long been settled as a rule of practice that the Courts will not interfere in the assessment of compensation under the Lands Clauses Acts on the ground that the owner is claiming in respect of a wrong title or in respect of an interest for which he is not entitled to compensation (*c*). The principle is that the owner is

Injunction not granted to try right to compensation.

(*a*) *Schwinge v. London and Blackwall Rail. Co.* (1855), 24 L. J. Ch. 405; *Spencer v. Metropolitan Board of Works* (1882), 22 Ch. D. 142; 52 L. J. Ch. 249; *Great Western Rail. Co. v. Swindon, &o. Rail. Co.* (1882), 22 Ch. D. 677; (1884), 9 App. Cas. 787; 53 L. J. Ch. 1075.

(*b*) *Shepherd v. Corporation of Norwich* (1885), 30 Ch. D. 553; 54 L. J. Ch. 1050; *Guest v. Poole and Bournemouth Rail. Co.* (1870), L. R. 5 C. P. 553, 559, *per* Brett, L. J.; 39 L. J. C. P. 329.

(*c*) *East and West India Dock Co. v. Gattke* (1851), 20 L. J. Ch. 217; *South Staffordshire Rail. Co. v. Hall* (1851), 20 L. J. Ch. 397; *Brierley Hill L. B. v. Pearsall* (1884), 9 App. Cas. 595, at p. 601; 54 L. J. Q. B. 25; *London and Blackwall Rail. Co. v. Cross* (1886), 31 Ch. D. 354; *Birmingham and District Land Co. v. London and North Western Rail. Co.* (1888), 40 Ch. D. 268.

entitled to have his claim assessed as brought forward by him under the provisions of the Lands Clauses Acts, and that questions of title or of validity of claim are not within the jurisdiction of the assessing tribunals, and will be left to be determined in subsequent proceedings. As regards arbitrations, no difference has been made by the Judicature Acts (*d*); the Arbitration Act, 1889 (*e*), affords an additional argument in favour of the practice against granting an injunction or mandamus. It contains (*f*) a special provision enabling any arbitrator or umpire, at any stage of the proceedings under a reference, to state, in the form of a special case for the opinion of the Court, any question of law arising in the course of the reference. In many cases, this will be a convenient form of procedure to adopt with a view to save unnecessary expense (*g*). Section 19 also empowers the Court to direct the arbitrator to state in the form of a special case, for the opinion of the Court, any question of law arising in the course of the reference, and the Court in a proper case would exercise this power in a reference under the Lands Clauses Acts. The application should be made to a master by summons under R. S. C., O. LIV. r. 12a (*g*). In Scotland the procedure is different, and an action for interdict under similar circumstances can be maintained (*h*). The Arbitration Act, 1889 (*i*), also gives the arbitrator or umpire power to state his award as to whole or part, in the form of a special case for the opinion of the Court.

Compensation
is value of
lands to
owner.

The basis on which compensation for lands taken is to be assessed is the value of the lands to the owner as it existed at the date of the notice to treat and not their value, when taken, to the promoters (*k*).

(*d*) *North London Rail. Co. v. Great Northern Rail. Co.* (1883), 11 Q. B. D. 30; 52 L. J. Q. B. 380; *Kitts v. Moore*, [1895] 1 Q. B. 253; 64 L. J. Ch. 152.

(*e*) Appendix, p. 472; cf. *Farrar v. Cooper* (1890), 44 Ch. D. 323; 59 L. J. Ch. 506. And see the text-books on the subject, such as Russell on Arbitration.

(*f*) S. 19.

(*g*) *Vide post*, p. 194.

(*h*) *Fleming v. Newport Rail. Co.* (1883), 8 App. Cas. 265.

(*i*) S. 7.

(*k*) *Corrie v. MacDermott*, [1914] A. C. 1056; *Cedar Rapids Manufacturing and Power Co. v. Lacoste*, [1914] A. C. 569; *In re Lucas and Chesterfield Gas and Water Board*, [1909] 1 K. B. 16; *Fraser v. City of Fraserburgh*, [1917] A. C. 187; cf. *Pastoral Finance Association, Ltd. v. The Minister*, [1914] A. C. 1083. The propositions which follow are set out in a slightly different form by Eve, J., in *South Eastern Rail. Co. v. London C. C.*, [1915] 2 Ch. 252, 258.

All advantages which the land possesses, present or future, in the hands of the owner may be taken into consideration (*l*), and the owner is entitled to have the price assessed in reference to those advantages which will give the land the greatest value. The value of an owner's interest is not properly compensated by assessing the amount of pecuniary benefits obtained by past user in disregard of possible benefits in the future (*m*). The probability of a more profitable future use is one such advantage which may be taken into consideration. Thus land which may probably be used for building purposes must not be valued on the same basis as purely agricultural land (*n*). But although prospective value is a necessary element in the assessment of compensation, such value must be entirely excluded where it would arise from the construction of the particular works authorized by the Act which gives compulsory powers (*o*). It is a recognized principle to exclude from the assessment of compensation any enhancement or diminution in value consequent on the construction of works authorized by the special Act under which the assessment is made.

Including present and future advantages.

But not such as arise from the construction of the authorized works.

In *Penny v. Penny* (*p*), Wood, V.-C., says:—"As to the value of the interest, it appears to me clear that the plaintiff's interest is not to be treated as having been increased through an act of the Board of Works. One might as well value the interest of the improvements which have taken place in consequence of the houses having been thrown down and other constructions made, and so on. It is not the interest which has been acquired by the Board that has to be estimated, but the value of the interest taken from the person with whom the Board deals. . . The scheme of the Act I take to be this, that every man's interest shall be valued *rebus sic stantibus*, just as it occurs at the very moment when the notice to treat was given."

The increased value of lands by reason of any advantage over Special market value.

(*l*) *Cedar Rapids Manufacturing and Power Co. v. Lacoste*, [1914] A. C. 569; *In re Lucas and Chesterfield Gas and Water Board*, [1909] 1 K. B. 16; *Fraser v. City of Fraserville*, [1917] A. C. 187.

(*m*) *Trent-Stoughton v. Barbados Water Supply Co.*, [1893] A. C. 502; but cf. *Eldon (Earl) v. North Eastern Rail. Co.* (1899), 80 L. T. 723.

(*n*) *R. v. Brown* (1867), L. R. 2 Q. B. 630.

(*o*) *In re Lucas and Chesterfield Gas and Water Board*, [1909] 1 K. B. 16; *Cedar Rapids Manufacturing and Power Co. v. Lacoste*, [1914] A. C. 569; *Fraser v. City of Fraserville*, [1917] A. C. 187.

(*p*) (1868), L. R. 5 Eq. 227.

and above the bare agricultural value is merely the price which possible intended undertakers would give. That price must be tested by the imaginary market which would have ruled had the land been exposed for sale before any undertakers had secured any powers or acquired the other subjects which made the undertaking as a whole a realized possibility (*q*). In assessing the value of any probable future advantages it is the present value alone of such advantages that falls to be determined (*q*).

In the case of *In re Lucas and Chesterfield Gas and Water Board* (*r*), Fletcher Moulton, L. J., summarises thus the results of the earlier decisions (*s*): "The decided cases seem to me to have hit upon the correct solution of this problem. To my mind they lay down the principle that where the special value exists only for a particular purchaser who has obtained powers of compulsory purchase it cannot be taken into consideration in fixing the price, because to do otherwise would be to allow the existence of the scheme to enhance the value of the lands to be purchased under it. But when the special value exists also for other possible purchasers, so that there is, so to speak, a market, real though limited (*t*), in which that special value goes towards fixing the market price, the owner is entitled to have this element taken into consideration just as he would be entitled to have the fertility or the aspect of a piece of land capable of being used for agricultural purposes" (*u*).

Thus the fact that land has peculiar natural advantages for supplying water to a district or area may be taken into consideration in the assessment of compensation, and it is not necessary that it should be proved that the land could be similarly used by other

(*q*) *Cedar Rapids Manufacturing and Power Co. v. Lacoste*, [1914] A. C. 569, 576.

(*r*) [1909] 1 K. B. 16, 31; approved in *Cedar Rapids Manufacturing and Power Co. v. Lacoste*, [1914] A. C. 569.

(*s*) *In re Countess Ossalinsky and Manchester Corporation* (1883, Q. B. D.), reported in Browne & Allan's Law of Compensation, 2nd ed., p. 659; *In re Tyne-mouth Corporation and Duke of Northumberland* (1903), 89 L. T. 557; *In re Gough and Aspatria, &c. Water Board*, [1904] 1 K. B. 417; and see *Riddell v. Newcastle, &c. Water Co.* (1879), *The Times*, 14th June (C. A.).

(*t*) "It is evident that while all opportunity of employment for a certain purpose in regard to the position of land to be acquired is to be taken into account, there must come a point where the opportunity becomes so remote as to be negligible": *Odum v. City of Vancouver* (1915), 85 L. J. P. C. 95, commenting with approval on *Cedar Rapids Manufacturing and Power Co. v. Lacoste*, *supra*.

(*u*) Cf. *Sidney v. North Eastern Rail. Co.*, [1914] 3 K. B. 629.

specified competitors (*x*) ; and the same principle applies where the land of the claimant, though not in itself adaptable for a reservoir, is so adaptable in conjunction with other adjacent lands belonging to other owners (*y*). In such a case an arbitrator would be bound to treat the enhancement of value as something to be shared by the component pieces of land in such proportion as he thought their relative importance merited (*z*).

Where land had been bought with the intention of building a school upon it, for which purpose it was specially adapted, it was held that in the assessment of compensation the intention to use the site for a school should be taken into consideration, although no school had been built at the date of the service of the notice to treat (*a*).

"It is no answer" to a claim for increased value by reason of special advantages "to say that the purchasers must necessarily be persons possessing parliamentary powers, and that none such exist at the moment except the one that is actually exercising his compulsory powers. In the case of waterworks for public supply promoters must always arm themselves with parliamentary powers, since distribution itself would otherwise be impracticable. But if by its prudence and forethought a public authority had by private negotiation secured a desirable site for a reservoir for the water supply of its own district it would not be in accordance with the practice of Parliament to refuse to it the powers necessary to its effective use for that purpose" (*b*).

The term "special adaptability," which was introduced in connection with undertakings such as reservoirs, and (as Fletcher Moulton, L. J., points out in the judgment above quoted) is not a happy one, connotes no new principle, being only a compendious expression used to indicate the existence of certain advantages, present or future, whereby the land in question has a special value in a particular limited market. "Special adaptability."

(*x*) *In re Gough and Aspatria, &c. Water Board*, [1903] 1 K. B. 574; [1904] 1 K. B. 417.

(*y*) *In re Tynemouth Corporation and Duke of Northumberland* (1903), 89 L. T. 557.

(*z*) *In re Lucas and Chesterfield Gas and Water Board*, [1909] 1 K. B. 16, 33.

(*a*) *Bailey v. Isle of Thanet Light Railways Co.*, [1900] 1 Q. B. 722.

(*b*) *In re Lucas and Chesterfield Gas and Water Board*, [1909] 1 K. B. 16, per Fletcher Moulton, L. J., at p. 31; cf. Acquisition of Land (Assessment of Compensation) Act, 1919, *post*, p. 323.

Principles on which restrictions attaching to land in the hands of the owner are to be taken into account.

All restrictions attaching to the land in the hands of the owner (including the likelihood of their continuance) must also be taken into consideration.

The Privy Council in delivering their judgment in the case of *Corrie v. MacDermott* (c), gave the following explanation of the older authorities :—

“ In their Lordships’ opinion both cases, *Hilcoat’s case* (d) and “ *Stebbing’s case* (e), are consistent with the general principle above “ laid down, and the only difference arose from the application of “ that principle to different facts.

“ *Hilcoat’s case* arose upon the question of an exception to a “ direction given to a jury. Under an Act of Parliament a railway “ company was authorized to take the church of St. M. and certain “ ground attached thereto upon the terms that they should only “ get possession when with the consent of the bishop of the diocese “ and the Archbishop of York a price had been fixed—in the fixing “ of such price regard being had to the cost of getting a new site “ and erecting a new church and compensating the person entitled “ to the land not actually forming part of the church, which sum “ should be held by the two ecclesiastical persons aforesaid for the “ purpose of procuring a new site and erecting a new church, “ and for compensating the person entitled as aforesaid. The “ bishops agreed with the railway company for the sum of 7,700*l.* “ odd and indemnity against any claim by the incumbent. “ They then offered the incumbent (who was the person entitled “ to the land not occupied by the church as aforesaid) the sum of “ 300*l.* This he refused and raised action. The case was tried “ by Wilde, C. J., who directed the jury, first, that the fact of the “ bishops fixing 300*l.* as a proper sum for compensation did not “ bind the plaintiff ; and second, that they were not bound to “ estimate the value of the ground to which the plaintiff was “ entitled, as land irrevocably appropriated to spiritual purposes, “ of which the plaintiff could make no pecuniary advantage, but “ that it was competent to them to form this estimate of the value

(c) [1914] A. C. 1056 (Lords Dunedin, Atkinson and Sumner and Sir Joshua Williams).

(d) *Hilcoat v. The Archbishops of Canterbury and York* (1850), 19 L. J. C. P. 376.

(e) *Stebbing v. Metropolitan Board of Works* (1870), L. R. 6 Q. B. 37; cf. *Secretary of State for Foreign Affairs v. Charlesworth, Pilling & Co.*, [1901] A. C. 373; *Sydney Municipal Council v. Young*, [1898] A. C. 457.

“with reference to all the circumstances that had appeared in evidence before them. The jury found for the plaintiff and assessed damages at 1,540*l.* Upon a rule being granted the Court held that the directions were right.

“It seems quite plain that although, as above said by their Lordships, restrictions must be kept in view, the chance of such restrictions being discharged must also be kept in view. That was all that was decided in *Hilcoat's case*, and in their Lordships' view rightly decided. Whether under the circumstances of the case the jury did not give too much is quite another matter, and does not affect the principles of the case.

“In *Stebbing's case* the ground taken was part of city churchyards in which any further burial had been prohibited by Order in Council. The rector claimed that he should be paid for his freehold interest in the said churchyards the value of the ground as if it were unrestricted, minus the sum it would cost to remove the human remains to other ground. The Board of Works (who had taken the ground) contended that the value to be assessed was the value of the ground as it stood in the rector's hands. It was thus decided, and the decision upon principle is strictly right. The case does not disclose whether the arbitrator (who had formulated the contended principles to be decided by the special case) eventually settled that the rector's interest was pecuniarily nil. There are doubtless indications in the judgments that that was the view of the judges. In so saying, however, they in strictness went beyond their province. Strictly the rector was entitled to have valued his chance of ever getting the land in his hands in such a condition as could bring pecuniary value. But the valuation under the circumstances might well be nil.

“And now it may be remarked that a restriction which prevents selling, though it must be taken into account, and may very well affect the value, does in no way reduce the value to nil. To a judge on the facts in *Stebbing's case* it might indeed well appear that the value was nil. For the land could not be sold, for it was dedicated to spiritual purposes (*f*), and further its use as far

(*f*) But even so, there may exist a possibility of future sale, such, for instance, as under a scheme for union of benefices, and in assessing the value of the land any such future possibility is rightly taken into consideration: *City and South London Rail. Co. v. United Parishes of St. Mary Woolnoth and St. Mary Woolchurch Haw*, [1903] 2 K. B. 728; [1905] A. C. 1.

“as profitable, as, *e.g.*, in the matter of fees, was also exhausted, “for the ground was full and no further interments were possible “because of the Order in Council. But other circumstances would “lead to a perfectly different result, and as an illustration their “Lordships would refer to a case which, though not at law, was “decided by a judge of authority, the late Lord Shand. A strip “of land in West Princes Street Gardens, below the Castle Rock, “in Edinburgh, was taken by the North British Railway under an “Act of Parliament under terms of paying compensation to the “corporation of Edinburgh, who were the owners of the ground. “By Act of Parliament the corporation was prohibited from ever “building on the land, or alienating it ; but was bound to keep it “for all time as a public garden.

“Under the circumstances the railway company contended before “Lord Shand, who was chosen as sole arbitrator, that the land was “worth nothing, and that a mere nominal sum should be paid. “The corporation on the other hand maintained that the true compensation was what would provide another strip of exactly the “same quality ; and as this could only be got by taking Princes “Street itself, that the money value must be estimated at what it “would cost to buy a strip of Princes Street—the most valuable “site in Edinburgh. Lord Shand held both views to be wrong. “He held that, the corporation being restricted, the value could not “be measured by the value of unrestricted land in a similar “position ; but that on the other hand the land was of value to “the corporation who enjoyed it with the rest of the adjoining land, “for the use of the citizens as a garden, which garden would be “so much less valuable because it was smaller, and he assessed on “that view. Their Lordships consider that his judgment proceeded on correct principles.”

Reinstatement.

There are some cases in which the income derived, or probably to be derived, from land would not constitute a fair basis in assessing the value to the owner, and then the principle of reinstatement should be applied. This principle is that the owner cannot be placed in as favourable a position as he was in before the exercise of compulsory powers, unless such a sum is assessed as will enable him to replace the premises or lands taken by premises or lands which would be to him of the same value. It is not possible to give an exhaustive catalogue of all cases to which the principle of reinstatement is applicable. But we may instance churches, schools, hospitals, houses of an exceptional character,

and business premises in which the business can only be carried on under special conditions or by means of special licenses (*g*). In the Edinburgh case referred to above it was sought to extend the principle of reinstatement to a case in which a portion of a public garden had been taken, but such a contention was rightly set aside by Lord Shand (*gg*).

Where the Conservators of the River Thames had given the consent required by the special Act to be obtained to plans for building a railway bridge across the Thames, it was held that this consent did not affect their rights as owners of the soil in the bed of the river, and that in respect of such ownership they were entitled to compensation for land taken (*h*).

Consent of Conservancy to plans.

In cases under the Lands Clauses Acts where lands have been taken, the contention that the promoters can claim to set off against the value of such lands any enhanced value consequent on the construction of the authorized works to the adjoining lands of the same owner (the "principle of betterment") (*i*) has been disallowed (*k*) as it has, where lands have not been taken, but only injuriously affected (*l*).

No set-off of enhanced value.

Sections 34, 51 of the Lands Clauses Act, 1845, provide for the payment of costs by the promoters unless the amount of compensation assessed is the same or a less sum than shall have been offered by the promoters of the undertaking. The issue in assessing the amount of compensation is the value to the owner; and the amount previously tendered is irrelevant, and should not be used in evidence on the inquiry before the arbitrators, or their umpire, or a jury, since the liability to costs is not in the discretion of the tribunal, but is settled by the Act. Parke, B., says: "They [the tribunal] would have no power to take evidence as to the amount

Evidence not to be admitted of amount of offer.

(*g*) *London School Board v. South Eastern Rail. Co.* (1887), 3 Times L. R. 710; *R. v. Burrow* (1884), *The Times*, 24th Jan. 1884 (C. A.); affirmed in H. L., *sub nom. Metropolitan and Metropolitan District Rail. Cos. v. Burrow*, *The Times*, 22nd Nov. 1884.

(*gg*) See the previous page.

(*h*) *Thames Conservators v. Victoria Station, &c. Rail. Co.* (1868), L. R. 4 C. P. 59; 38 L. J. C. P. 4; cf. *Metropolitan Board of Works v. Metropolitan Rail. Co.* (1868), L. R. 3 C. P. 612; 4 C. P. 192; 32 L. J. C. P. 281.

(*i*) See Book II., c. I., *post*, p. 315.

(*k*) *South Eastern Rail. Co. v. London C. C.*, [1915] 2 Ch. 252.

(*l*) *Senior v. Metropolitan Rail. Co.* (1863), 32 L. J. Ex. 225; *Eagle v. Charing Cross Rail. Co.* (1867), L. R. 2 C. P. 638; 36 L. J. C. P. 297.

previously tendered, and could not, therefore, determine the costs by the award" (*m*).

Compensation includes all loss in consequence of eviction from the lands.

The loss to an owner, whose lands are required or have been taken, omitting all questions of injury to adjoining lands, includes not only the actual value of such lands, but all damage directly consequent on the taking thereof under statutory powers.

In *Ricket v. Metropolitan Rail. Co.* (*n*), there is a dictum of Erle, C. J., which expresses this principle: "As to the argument, that compensation is in practice allowed for the profits of trade where the land is taken, the distinction is obvious. The company, claiming to take lands by compulsory powers, expel the owner from his property and are bound to compensate him for all the loss incurred by the expulsion, and the principle of compensation then is the same as in trespass for expulsion, and so it has been determined in *Jubb v. Hull Dock Co.*" (*o*).

Damages through removal.

If the owner is in occupation of premises, he is entitled to compensation for damages incurred through the necessity of removal, since these are losses consequent on the taking of his property under statutory powers.

Fixtures.

Such damages include the value of those fixtures which are attached to the freehold. Care must be taken, especially in the case of trade fixtures, that compensation is given to the right claimant. or the promoters may have to pay both the landlord and the tenant in respect of the same fixtures. This may be an important item, if a manufactory is carried on upon the premises in question (*p*); and it is always desirable where possible to agree and schedule the fixtures to be taken into account on the assessment of the compensation due to any particular claimant. Mere chattels as distinguished from fixtures are not the subject for compensation, and their value should not be included.

Costs of removal or loss through forced sale.

Such damages also include the cost of the removal by the owner of his furniture and goods, and the consequent depreciation in the value of furniture which has been specially fitted, but which is not a fixture attached to the freehold. If the claimant is a trader, they will also include any diminution in the value of his stock consequent on its removal or, in the alternative, on a forced sale, if such is shown to be the only practicable course. Where the

(*m*) *Gould v. Staffordshire Potteries Waterworks Co.* (1850), 19 L. J. Ex. 281.

(*n*) (1865), 34 L. J. Q. B. 257.

(*o*) (1846), 15 L. J. Q. B. 403.

(*p*) *Gibson v. Hammersmith Rail. Co.* (1863), 32 L. J. Ch. 337.

claimant incurs a liability to an increased rental or other reasonable expenses in taking equally convenient new premises for the purpose of carrying on his business, such increased rental and other expenses should be taken into account in the assessment of compensation, and this principle applies though the business is not being carried on at a profit (*q*).

Increased
rental.

A yearly tenant who received notice from the promoters of an undertaking to give up possession in six months, has been held entitled to compensation for any expenses to which he had been put by the notice, including, it would seem, any expense incurred by *bonâ fide* preparations to leave the premises, notwithstanding that the company subsequently informed the tenant that they should not take possession at the end of the six months (*r*).

A further item to be taken into consideration is the probable diminution in the value of the claimant's goodwill in his trade consequent on the taking of the premises in which such trade is carried on. This claim is often made under the head of loss of goodwill; but this is not correct, and has a tendency to enhance the amount of compensation in excess of the loss actually incurred. Goodwill is the probability of the continuance of a business connection, and its value is fixed at a certain number of years' purchase according to the nature of the particular trade or business. When lands, however, are taken under compulsory powers, the goodwill is not purchased by the promoters, but remains the property of the trader, and the loss suffered by him is the diminution in its value in consequence of his compulsory ejection from the premises he is occupying. So far from the goodwill being purchased or destroyed by the promoters, there are many cases in which the diminution in its value is hardly appreciable, although the trade premises have compulsorily been taken. If a business is of a wholesale character, or is one which consists of orders from a widely extended area, a compulsory change of trade premises would be productive of small loss. If, in addition, convenient premises can be acquired in the immediate neighbourhood of the premises taken, the loss incurred through diminution in the value of goodwill becomes merely nominal, and the owner's only claim to compensation is in respect of any reasonable expenses which the

Diminution
in value of
goodwill.

(*q*) *R. v. Burrow* (1884), *The Times*, 24th Jan. 1884 (C. A.); affirmed, H. L., *sub nom. Metropolitan and Metropolitan District Rail. Cos. v. Burrow*, *The Times*, 22nd Nov. 1884.

(*r*) *R. v. Rochdale Improvement Commissioners* (1856), 2 Jur. N. S. 861.

taking of equally convenient new premises has rendered necessary (*s*). On the other hand, there are cases in which the diminution in the value of a goodwill may practically equal the entire value of the goodwill. This is the case where a business is retail and local, depending on neighbouring customers, and no suitable premises can be found in the locality within which the business connection extends (*t*). Although in some cases the goodwill of trade premises passes to a mortgagee, this does not apply where the goodwill depends on the personal skill of the owner; and in such a case the owner, and not the mortgagee, is entitled to compensation awarded for the loss of goodwill (*u*). Compensation for loss of trade may be awarded although the claimant has no legal interest in the premises in which the trade is carried on (*x*); but in such a case the insecurity of his tenure would be a relevant matter in considering the amount due.

The fact that business is being carried on at a loss does not disentitle the owner from claiming for trade loss on the ground that if he had not been expropriated he would have had an opportunity of making his business profitable (*y*). The amount of such compensation would be a simple question of fact for the assessing tribunal.

Remoteness of
damage in
such cases.

In assessing the damage incurred consequent on the taking of lands under parliamentary powers, the ordinary principles of law as to remoteness of damage apply. Where a market gardener was, by reason of the company taking his garden, unable to warrant his seeds, which in consequence were depreciated in value, the Court, though with some hesitation, held the damage to be too remote and not such as would entitle the claimant in respect thereof to compensation (*z*). A claim in respect of the expenses which might

(*s*) Cf. dictum of Bramwell, L. J., in *In re Bidder and North Staffordshire Rail. Co.* (1879), 4 Q. B. D. 412, 432; 48 L. J. Q. B. 248; *R. v. Scard* (1894), 27 W. R. 540; *R. v. Burrow* (1884), *The Times*, 24th Jan. 1884 (C. A.); affirmed, H. L., *sub nom. Metropolitan and Metropolitan District Rail. Cos. v. Burrow*, *The Times*, 22nd Nov. 1884.

(*t*) *White v. Commissioners of Public Works* (1870), 22 L. T. 591.

(*u*) *Cooper v. Metropolitan Board of Works* (1883), 25 Ch. D. 472; 53 L. J. Ch. 109.

(*x*) *Ex parte Cooper, In re North London Rail. Co.* (1865), 34 L. J. Ch. 373, 375.

(*y*) *R. v. Burrow* (1884), *The Times*, 24th Jan. 1884 (C. A.); affirmed, H. L., *sub nom. Metropolitan and Metropolitan District Rail. Cos. v. Burrow*, *The Times*, 22nd Nov. 1884.

(*z*) *Clarke v. Wandsworth Local Board* (1868), 17 L. T. 549; cf. *Bigg v.*

be incurred for educating the children of workmen employed in the construction of a reservoir was held to be too remote and too uncertain to entitle the claimant to compensation (a).

The cost of lands does not, of course, determine their value, but may be a relevant consideration in the assessment of compensation ; and so, too, may be money *bonâ fide* spent in improvements by the owner (b). Where a railway company were tenants from year to year of certain lands and served a notice to treat upon the owner before terminating their tenancy it was held that the umpire in making his award was entitled to consider the yearly rent hitherto paid by the railway company as a basis upon which to calculate the value of the lands, as the owner had a reasonable expectation of continuing to receive such a rent, although it was considerably higher than the mere agricultural rent that would be obtainable (c).

Cost an element in value.

Where no special principle has to be applied, the purchase-money payable to an owner of an estate in fee simple, for lands of which he is in possession, is ascertained by multiplying the highest annual value which he might expect to obtain from such land by the number of years' purchase which the special circumstances require. The number of years' purchase depends on the interest which the property should yield to a purchaser, and should be taken from the recognized tables. Thus, if property should yield to a purchaser four per cent., the number of years' purchase would be twenty-five.

Compensation payable to owner in possession.

The present value of his land, to the owner of a reversionary interest, who is receiving no present benefit, can be calculated by one of the following methods :—

Compensation payable for a reversion.

Take the case of an owner entitled to a property of the annual value of 100*l.* on the expiration of a term of twenty years. On the four per cent. table he would be entitled to a sum of 2,500*l.* at the end of twenty years. The present value of a sum of 2,500*l.* deferred for twenty years on the four per cent. table is 2,500*l.* \times .4564 = 1,141*l.*

Corporation of London (1873), L. R. 15 Eq. 376; *In re Kilworth Rifle Range*, [1899] 2 Ir. R. 305.

(a) *In re Tynemouth Corporation and Duke of Northumberland* (1903), 89 L. T. 557.

(b) *Streatham, &c. Estates Co. v. Public Works Commissioners* (1888), 52 J. P. 615; affirmed on appeal, not reported; cf. *Ex parte Cooper, In re North London Rail. Co.* (1865), 34 L. J. Ch. 373.

(c) *Eldon (Earl) v. North Eastern Rail. Co.* (1899), 80 L. T. 723.

The same result would be arrived at by subtracting from 2,500*l.* the present value of an annuity of 100*l.* payable for twenty years. Taking again the four per cent. table, the present value of such an annuity is $100\textit{l.} \times 13\cdot590 = 1,359\textit{l.}$; and $2,500\textit{l.} - 1,359\textit{l.} = 1,141\textit{l.}$

The owner in reversion is, in many cases, receiving some present income from his land. Thus, a landlord may be entitled to a rental of 90*l.* from a property which, if in hand, would be worth 100*l.* a year. The present value of his interest to such owner may be calculated by one of the following methods, adopting throughout the four per cent. table :—

The value of an annuity of 10*l.* a year is $10\textit{l.} \times 13\cdot59 = 135\cdot9\textit{l.}$, and by subtracting this sum from 2,500*l.*, which represents the value of 100*l.* in perpetuity, we have the sum of 2,364*l.*, which is the present value to an owner who is entitled to 90*l.* a year for twenty years, and then to a reversion of 100*l.* in perpetuity.

Or the present value of an annuity of 90*l.* a year for twenty years should be calculated, = 1,223*l.*, and added to the value of an annuity of 100*l.* in perpetuity, deferred for twenty years, = 1,141*l.* $1,223\textit{l.} + 1,141\textit{l.} = 2,364\textit{l.}$, which is, of course, the same result as above (c).

Copyholds.

If lands are held by copyhold tenure, their value should be assessed on the ordinary basis, and then the cost of enfranchisement should be deducted.

Compensation
to lord for en-
franchise-
ment.

Sections 95—98 (d) deal with the question of enfranchisement and the compensation to be paid to the lord therefor. There is an obligation upon the promoters to procure the enfranchisement of copyhold lands within three months after the enrolment of the conveyance of the lands or within one month after they enter upon and make use of the lands for the purposes of the works. At the expiration of the period so allowed the rights as between the parties are settled, and compensation ought to be assessed with reference to the date when the obligation to enfranchise arose (e). The amount of compensation to be paid for the enfranchisement is to be determined as in other cases of disputed compensation, an allowance being made for all fines, heriots, and other services pay-

(c) See Inwood's Tables.

(d) See *post.* Chap. XVIII., p. 285, where the sections are set out.

(e) *In re Marquis of Salisbury and London and North Western Rail. Co.*, [1892] 1 Ch. 75, n.; *Lowther v. Caledonian Rail. Co.*, [1892] 1 Ch. 73; *In re Northumberland (Duke) and Mayor, &c. of Tynemouth*, [1909] 2 K. B. 374.

able on death, descent or alienation, or any other matters which would be lost by the vesting of the copyholds in the promoters (*f*). Until the lands are actually enfranchised they continue subject to the same fines, heriots and services as were theretofore payable and of right accustomed, so that in fixing compensation there must be taken into account all fines, etc. which would have accrued payable but for the taking of the lands by the promoters, arising between the date when the obligation to enfranchise arose and the date of actual enfranchisement (*g*); and where the land has acquired an improved annual value between those dates, even though it be as a result of the works executed thereon by the promoters themselves, the fines becoming payable are to be assessed according to the improved annual value of the land (*h*). It is proper for an allowance to be made for interest at four per cent. from the date when the obligation to enfranchise arose until actual payment of the compensation money, subject to the deduction therefrom of the amount of rents and other manorial services received by the lord during that period (*i*).

The purchase-money payable to a lessee or tenant, as the value of his term or tenancy, depends on the difference between the actual rental paid by him and the improved annual rental that the property is worth. This difference must be multiplied by the number of years' purchase at which the tenant's interest should be valued. This will be determined by the character of the property and by the length of the term or tenancy. If the actual rental of property is 90*l.*, and its improved annual rental is 100*l.*, and the property is such that it should be purchased to pay six per cent., and the length of the term is ten years, then the recognized tables would give 7·360 as the number of years' purchase to be taken, and the capitalized value of the tenant's interest would be ascertained by multiplying 10*l.* by 7·360 (*j*).

Compensation payable to a tenant or lessee.

The interest in lands for which compensation should be assessed, is fixed as at the time of service of a notice to treat or some similar

Compensation for change in nature of a tenancy.

(*f*) Allowance must be made for "quittances": *In re Northumberland (Duke) and Mayor, &c. of Tynemouth*, [1909] 2 K. B. 374.

(*g*) *Lowther v. Caledonian Rail. Co.*, [1892] 1 Ch. 73; *Leconfield (Lord) v. London and North Western Rail. Co.*, [1907] 1 Ch. 38.

(*h*) *Lowther v. Caledonian Rail. Co.*, [1892] 1 Ch. 73.

(*i*) *In re Marquis of Salisbury and London and North Western Rail. Co.*, [1892] 1 Ch. 75, n.; *In re Northumberland (Duke) and Mayor, &c. of Tynemouth*, [1909] 2 K. B. 374.

(*j*) See Inwood's Tables.

notice, indicating the intention of the promoters to take such lands (*k*), and no interest subsequently created gives a valid claim for compensation (*l*). If, after receiving such notice, the tenant continues in occupation, the benefit of such occupation is in many cases equivalent to the loss which would have been incurred by eviction, and it is then sufficient to consider the value of the premises in question as from the time when possession is required by the promoters. When, however, the effect of a notice to treat or a similar notice is to change the character of an occupation of premises and to make it less valuable, the tenant is entitled to compensation as from the time when such notice was given, and the loss should be assessed: see per Willes, J., in *Cranwell v. Mayor of London* (*m*), "During the whole period after the expiration of the six months the plaintiff remained in possession, subject to a liability to be turned out at a moment's notice, provided payment were made by the corporation of the purchase-money due to him, if any; and he was entitled to compensation at the least for the difference between such a position, which was that of a mere tenant at sufferance, and the position of a tenant with a right to retain possession till a fixed and definite period."

If a tenant, in consideration of being allowed to continue in occupation, gives up his right to make a claim for disturbance in the character of his tenancy, this is an arrangement which would by its terms disentitle him to compensation under that head (*n*).

Deterioration in the nature of a tenancy consequent on a notice of an intention to take the lands comprised in such tenancy must be distinguished from deterioration in the value of a tenancy through the taking of surrounding houses. The taking of surrounding houses may diminish the value of a tenancy, but the owner has no right to compensation and is not injuriously affected by such taking *per se* (*o*).

If interest of tenant ends before disturbance, no compensation.

If the interest of a tenant is not interfered with by the promoters during the continuance of the tenancy, or if a proper notice to quit in accordance with the terms of a tenancy is given by them

(*k*) *Tyson v. Mayor, &c. of London* (1871), L. R. 7 C. P. 18; 41 L. J. C. P. 6; *Wilkins v. Mayor of Birmingham* (1883), 25 Ch. D. 78; 53 L. J. Ch. 93.

(*l*) *Vide ante*, p. 81.

(*m*) (1870), L. R. 5 Ex. 284; 39 L. J. Ex. 193.

(*n*) *R. v. London and Southampton Rail. Co.* (1839), 10 A. & E. 33.

(*o*) *R. v. Vaughan* (1869), L. R. 4 Q. B. 190; 38 L. J. M. C. 49; *vide post*, pp. 153 *et seq.*

after acquiring the interest of the landlord or by the landlord himself (*p*), there is no disturbance of the tenant's interest, and no claim for compensation can be sustained (*q*). The compensation given under the special terms of the Hungerford Market Act (*r*) for the probability of the continuance of a tenancy could not be claimed under the Lands Clauses Act, 1845 (*s*), and the tenant was only entitled thereto under the special terms of the particular Act.

Compensation
for proba-
bility of con-
tinuance of
tenancy.

In *Ex parte Cooper, In re North London Rail. Co.* (*t*), compensation had been assessed for a lease which turned out to be invalid, having been granted by the executors instead of by the heir. Kindersley, V.-C., directed an inquiry as to the extent to which the lessee had benefited the estate by an outlay made on the faith that the lease was valid, and that the amount of such benefit should be paid to him out of money deposited in the Court. It is, however, submitted that although the lessee was entitled to compensation for trade loss, he was not entitled to compensation for his interest in a void lease. The owner would have been entitled to the value of the estate in possession as benefited by the outlay of the lessee, and in this case the promoters might have been compelled to pay twice over for the same interest. The rights as between the grantor of the void lease and the tenant in respect of expenditure made should be settled *inter se*, and are independent of the question of the compensation.

Where, after notice to treat had been given, the mortgagees in possession of the premises purported to take a surrender of the lease and to grant a new lease for a longer period, the lessee was held to be entitled to compensation on the basis of the old lease, as the surrender was void for want of consideration, the mortgagees having no power to create a new tenancy with an extended period after notice to treat had been given. The new lease did not operate

(*p*) But see the temporary provisions in the Increase of Rent and Mortgage Interest (Restrictions) Act, 1920 (10 & 11 Geo. 5, c. 17), especially s. 5 (e).

(*q*) *Ex parte Nadin* (1848), 17 L. J. Ch. 421; *R. v. London and Southampton Rail. Co.* (1839), 10 A. & E. 33; *Syers v. Metropolitan Board of Works* (1877), 36 L. T. 277; *Ex parte Merrett* (1859), 2 L. T. 471; *R. v. Poulter* (1887), 20 Q. B. D. 132; 57 L. J. Q. B. 138; cf. *R. v. Rochdale Improvement Commissioners* (1856), 2 Jur. N. S. 861.

(*r*) 11 Geo. 4, c. lxx. s. 19; *Ex parte Farlow* (1831), 2 B. & Ad. 341; *Ex parte Wright* (1831), 2 B. & Ad. 348; *R. v. Hungerford Market Co.*, *Ex parte Gosling* (1833), 4 B. & Ad. 596.

(*s*) Cf. *Lynch v. Glasgow Corporation* (1904), 5 F. 1174 (Ct. of Sess.).

(*t*) (1865), 34 L. J. Ch. 373.

as an absolute surrender of the old lease and consequently the old lease was not void (*u*).

Compensation only for a legal or equitable interest in land.

A mere expectancy, however reasonable, of renewal of a lease will not constitute an interest (*x*), even if it has led the claimant to expend money on the lands taken (*y*). But an equitable right to a lease is to be taken into account (*z*). A mere personal right, not attached as a right to lands taken, is not a matter to be taken into consideration in assessing purchase-money (*a*). An agreement with respect to the use of an office, unless it constitutes a tenancy in law (*b*) or equity, gives no title to compensation under the Lands Clauses Acts. An agreement "granting and letting" the exclusive right for a term of years to supply refreshments in a theatre with the use of cloakrooms and cellars is not an interest in land which can form the subject of compensation under the Lands Clauses Acts (*c*).

A right of pre-emption by the owners of lands over adjoining land has been held a personal right only (*a*).

Effect of special covenants.

When lands are held subject to special covenants, such covenants, so far as they affect the value of the owner's interest in such lands, must be considered in assessing the amount of compensation payable to him. An assessing tribunal is not called upon to determine how such covenants shall be construed, and has only to settle compensation on the basis that the construction of such covenants is rightly stated in the claim made.

In *Penny v. Penny* (*d*), leasehold premises were to be held by tenants at a low rent so long as they continued to carry on a certain business, and, in the event of their not doing so, the remainder of the term in the lease was to vest in other parties. A notice to treat was given to such other parties, who claimed the whole value of the premises for the remainder of the lease, and were awarded 8,222*l*. The tenants submitted their claim to arbitration, and were awarded 4,070*l*. It was held that the tenants were entitled

(*u*) *Zick v. London United Tramways, Limited*, [1908] 2 K. B. 126.

(*x*) *Lynch v. Glasgow Corporation* (1904), 5 F. 1174 (Ct. of Sess.).

(*y*) *R. v. Liverpool, &c. Rail. Co.* (1835), 4 A. & E. 650.

(*z*) *Sweetman v. Metropolitan Rail. Co.* (1863), 1 H. & M. 543.

(*a*) *Clout v. Metropolitan and District Rail. Cos.* (1883), 48 L. T. 257.

(*b*) *Municipal Freehold Land Co. v. Metropolitan, &c. Rail. Cos.* (1883), 1 Cab. & El. 184.

(*c*) *Frank Warr & Co. v. London County Council*, [1904] 1 K. B. 713; 73 L. J. K. B. 362; cf. *Edwardes v. Barrington* (1902), 85 L. T. 650.

(*d*) (1868), L. R. 5 Eq. 227; 37 L. J. Ch. 340.

to the interest in respect of which they had claimed; but that the other parties had claimed too much, and that their interest must be re-assessed and a deduction made for the contingency, that by a continuance of the existing tenancy they would only receive the low rent then paid by the tenants. It was clearly necessary that a re-assessment should be made. The value of the premises, subject to the contingency in question, could not be arrived at by deducting 4,070*l.* from 8,222*l.*, since the measure of benefit received from a covenant by one party cannot be taken as the measure of loss suffered under the same covenant by the other party. Some covenants might be equally beneficial or equally disadvantageous to both covenantor and covenantee (*e*). A restrictive covenant that a tenant during his term is not to sell beer other than that purchased of his landlord, enhances, or may enhance, the value of the premises to the landlord, and should be taken into consideration in the assessment of the amount of compensation due to him for loss incurred through the taking of the premises (*f*). A lease contained a proviso that in case any part of the land should be compulsorily taken the lessor might enter and repossess it. Part of the land having been compulsorily taken, it was held that the claimant (the lessor) was entitled to the benefit of the covenant and to the commercial value of the land taken as freed from the lease (*g*). A right reserved to a lessee in a mining lease to sink a pit or pits through some part of the surface land under which minerals had been demised to him entitles the lessee to claim compensation although the position of such pit or pits is subject to the reasonable approval of the lessor, his heirs, or assigns (*h*). Interference with the benefit of a restrictive covenant is a ground for a claim for compensation under section 68 by the owner of the land for the benefit of which the restriction is imposed (*i*), but the covenantee cannot maintain an action for breach of the covenant (*k*).

(*e*) *Brandon v. Brandon* (1864), 34 L. J. Ch. 333.

(*f*) *Bourne v. Mayor of Liverpool* (1863), 33 L. J. Q. B. 15; *In re Chandler's Wiltshire Brewery Co. and London County Council*, [1903] 1 K. B. 569; 72 L. J. K. B. 250.

(*g*) *In re Morgan and London and North Western Rail. Co.*, [1896] 2 Q. B. 469; 66 L. J. Q. B. 30.

(*h*) *In re Masters and Great Western Rail. Co.*, [1901] 2 K. B. 84; 70 L. J. K. B. 516.

(*i*) *Long Eaton Recreation Grounds Co. v. Midland Rail. Co.*, [1902] 2 K. B. 574; 71 L. J. K. B. 837.

(*k*) *Kirby v. Harrogate School Board*, [1896] 1 Ch. 437; 65 L. J. Ch. 376; *Manchester, Sheffield and Lincolnshire Rail. Co. v. Anderson*, [1898] 2 Ch. 394; 67 L. J. Ch. 568.

Promoters
cannot
exercise
power to
vary cove-
nants.

The promoters cannot, on acquiring the interests of a landlord or a superior, exercise the powers of varying or putting an end to special covenants, which such landlord or superior has reserved, in order to lessen or take away the claims of a tenant to compensation. Where a company, having acquired the interest of the landlord, gave notice to take part of a clay field, any portion of which the landlord was entitled to reserve at his pleasure, it was held that the tenant was entitled to compensation, and that the occupation of the company was attributable to their statutory powers, and could not be ascribed to an exercise of the powers which the landlord had reserved (*l*).

Covenants
inconsistent
with statu-
tory powers.

When the exercise of compulsory powers produces results inconsistent with the restrictions contained in a covenant, the party who would be benefited by such restrictions cannot claim damages against the covenantee in respect thereof, since "*Lex non cogit ad impossibilia*"; and a lessee holding under a lease containing covenants restricting his right to assign without the licence of the lessor, is entitled to treat with and make title to a railway company in respect of any part of the lands comprised in the lease without obtaining the licence of the lessor or his assent to an apportionment of the rent reserved (*m*), as section 119 of the Lands Clauses Act, 1845 (*n*), provides for the apportionment. In the case of *Baily v. De Crespigny* (*o*), Hannen, J., points out in his judgment that the plaintiff could have no claim for compensation against the railway company in respect of the loss suffered by him through breach of the covenant in question. This dictum must be limited to the case where the damage complained of was damage merely to adjoining property; if the restrictive covenant had given an increased value to the reversioner's interest in the lands taken, he would have been entitled in respect thereof to increased compensation (*p*).

If not incon-

When the performance of a covenant is not rendered impossible

(*l*) *Solway Rail. Co. v. Jackson* (1874), 1 Rettie (Sc.), 831; *Fleming v. Newport Rail. Co.* (1883), 8 App. Cas. 265; cf. *In re Masters and Great Western Rail. Co.*, [1901] 2 K. B. 84; 70 L. J. K. B. 516.

(*m*) *Slipper v. Tottenham and Hampstead Rail. Co.* (1867), L. R. 4 Eq. 112; 36 L. J. Ch. 841.

(*n*) *Post*, p. 298.

(*o*) (1868), L. R. 4 Q. B. 180; 38 L. J. Q. B. 98; and see *Matthey v. Curling* (1922), 38 Times L. R. 475.

(*p*) *Penny v. Penny* (1868), L. R. 5 Eq. 227; 37 L. J. Ch. 340; *Bourne v. Mayor of Liverpool* (1863), 33 L. J. Q. B. 15.

through the exercise of statutory powers, existing liabilities on such covenant continue in force (*q*).

sistent they continue in force.

Where under the terms of his lease a lessee voluntarily gives a notice to terminate his lease, he is no longer entitled to recover compensation on the footing of the full term in the lease (*r*).

Lessee giving notice to determine lease.

In the assessment of compensation for land taken for railway purposes it may usually be assumed that proper accommodation works, where lands have been severed, will be agreed or determined by justices under sections 68 and 69 of the Railways Clauses Consolidation Act, 1845 (*s*). Under these sections justices have only power to order accommodation works in reference to the present uses of the lands (*t*). When, therefore, land used for agriculture has a prospective value for building purposes, the compensation tribunal, valuing it as building land, should estimate the damage for severance, as if access had been cut off; since the justices, under sections 68 and 69 of the Railways Clauses Consolidation Act, 1845, could only order accommodation works in reference to the land as then used for agriculture, and these would be useless as an access to building land (*u*).

Accommodation works.

If the promoters are empowered to acquire, and do acquire mines and minerals under the surface of the ground, their value must be ascertained and paid for, on the same principles as apply to the surface lands. The word "lands" in the Lands Clauses Act, 1845, includes mines, and, apart from special statutory provisions or special agreement, the owner of mines under lands entered upon by the promoters for the purposes of their undertaking, can compel the promoters to take proceedings for the assessment and payment of their value (*x*). The Railways Clauses

Mines and minerals.

(*q*) *Mills v. East London Union* (1872), L. R. 8 C. P. 79; 42 L. J. C. P. 46; *Wainwright v. Ramsden* (1839), 5 M. & W. 602.

(*r*) *R. v. Poulter* (1887), 20 Q. B. D. 132; 57 L. J. Q. B. 138.

(*s*) Appendix, pp. 450, 451.

(*t*) *R. v. Fisher* (1862), 32 L. J. M. C. 12; *R. v. Brown* (1867), L. R. 2 Q. B. 630; 36 L. J. Q. B. 322; *Great Northern Rail. Co. v. McAlister*, [1897] 1 Ir. R. 587; *Great Western Rail. Co. v. Talbot*, [1902] 2 Ch. 759; 71 L. J. Ch. 835; but see also *South Eastern Rail. Co. v. Associated Portland Cement Manufacturers* (1900), Ltd., [1910] 1 Ch. 12.

(*u*) *R. v. Brown* (1867), L. R. 2 Q. B. 630; 36 L. J. Q. B. 322; *Rhondda and Swansea Rail. Co. v. Talbot*, [1897] 2 Ch. 131; 66 L. J. Ch. 570.

(*x*) *Errington v. Metropolitan District Rail. Co.* (1882), 19 Ch. D. 559; 51 L. J. Ch. 305; cf. *Midland Rail. Co. v. Robinson* (1890), 15 App. Cas. 19, 35, per Lord Macnaghten; 59 L. J. Ch. 442; *Great Western Rail. Co. v. Bennett*

Consolidation Act, 1845 (*y*), and the Waterworks Clauses Act, 1847 (*z*), and the greater number of the Canal Acts, contain special provisions relating to mines and minerals, and similar provisions will be found in numerous private Acts where the nature of the undertaking renders them applicable (*a*). But the construction of such provisions will depend upon the particular terms of the special sections (*b*), and there may be a distinction between subjacent and merely adjacent minerals (*c*). In purchasing lands required for the construction of works of a public character, it is for the most part unnecessary—at least, in the first instance—to purchase the mines and minerals under the surface (*d*); but, unless the provisions of a general Act apply to the undertaking in question, the promoters should insert such provisions in their special Act as are necessary for their protection.

Right to
subjacent and
adjacent
support.

If the incorporating Act contains no specific provisions for dealing with mines and minerals, then, although the mines and minerals are not purchased or taken, the promoters acquire the ordinary rights of a purchaser to subjacent and adjacent support, in reference to the purposes for which the surface land has been purchased (*e*); and so far as the value of the mines and minerals is thereby diminished to the owner, the loss should be assessed and

(1866), L. R. 2 H. L. 27; 36 L. J. Q. B. 133. In cases under s. 124 (*ante*, p. 68) the owner can initiate a claim: *Caledonian Rail. Co. v. Davidson*, [1903] A. C. 22.

(*y*) Appendix, p. 452.

(*z*) Appendix, p. 463.

(*a*) *Dudley Canal Co. v. Grazebrook* (1830), 1 B. & Ad. 59, distinguished in *Knowles & Sons v. Lancashire and Yorkshire Rail. Co.* (1889), 14 App. Cas. 248; *London and North Western Rail. Co. v. Walker*, [1903] A. C. 289; 72 L. J. K. B. 578; *Rugby Portland Cement Co. v. London and North Western Rail. Co.*, [1908] 2 K. B. 606.

(*b*) *Cromford Canal Co. v. Cutts* (1848), 5 Rail. Cas. 442; *Knowles & Sons v. Lancashire and Yorkshire Rail. Co.* (1889), 14 App. Cas. 248; *London and North Western Rail. Co. v. Walker*, [1903] A. C. 289; 72 L. J. K. B. 578; *Rugby Portland Cement Co. v. London and North Western Rail. Co.*, [1908] 2 K. B. 606; *Linlithgow (Marquess) v. North British Rail. Co.*, [1914] A. C. 820.

(*c*) *Chamber Colliery Co. v. Rochdale Canal Co.*, [1895] A. C. 564; 64 L. J. Q. B. 645; *New Moss Colliery Co. v. Manchester, Sheffield and Lincolnshire Rail. Co.*, [1897] 1 Ch. 725; 66 L. J. Ch. 381; *Rugby Portland Cement Co. v. London and North Western Rail. Co.*, [1908] 2 K. B. 606; *Linlithgow (Marquess) v. North British Rail. Co.*, [1914] A. C. 820.

(*d*) *In re Huddersfield Corporation and Jacomb* (1874), L. R. 10 Ch. 92; 44 L. J. Ch. 96.

(*e*) *Vide ante*, p. 95.

compensation should be given. In other words, if the nature of the works, for the purposes of which surface lands are taken, is such as to impose more than the customary restrictions on the working of the minerals by the owner, and thereby to diminish the value to him of his interest in the mines, the assessment of the value of the lands should include the loss to the owner from the diminution of the value of his interest in the mines situate under the lands taken (*f*). If it could be shown that the Act under which the surface land was taken did not allow of compensation being claimed for the loss occasioned to the mine owner, there would be a strong argument against the legislature having intended to give a right of support, but it is scarcely probable that in practice such a case would arise (*g*).

Where an adjacent mine owner, instead of initiating proceedings to ascertain the amount of compensation payable to him for interference with his right of working minerals proper to be left for the security of a canal or the mine, works the minerals, and thereby damages the canal, he is liable in damages (*h*). This principle would be modified where the private Act creates a special relationship as between the mine owner and the company (*i*).

It was decided in the case of *Caledonian Rail. Co. v. Sprot* (*k*), that where there are no special enactments altering the relationship between the parties, an owner who sells land for the construction of works authorized by Parliament upon it, impliedly sells all necessary support, both subjacent and adjacent, which is required for the purpose of supporting such works, and cannot, by reason of his

(*f*) *London and North Western Rail. Co. v. Evans*, [1893] 1 Ch. 16; 62 L. J. Ch. 1; *Glamorganshire Canal Co. v. Nixon's Navigation Co.* (1901), 85 L. T. 53; *Clippens Oil Co. v. Edinburgh, &c. Water Trustees*, [1904] A. C. 64; 73 L. J. P. C. 32; *Jary v. Barnsley Corporation*, [1907] 2 Ch. 600.

(*g*) *Metropolitan Board of Works v. Metropolitan Rail. Co.* (1868), L. R. 3 C. P. 612; 4 C. P. 192; 32 L. J. C. P. 281.

(*h*) *Knowles & Sons v. Lancashire and Yorkshire Rail. Co.* (1889), 14 App. Cas. 248; *Cromford Canal Co. v. Cutts* (1848), 5 Rail. Cas. 442.

(*i*) *Dudley Canal Co. v. Grazebrook* (1830), 1 B. & Ad. 59.

(*k*) (1856), 2 Macq. H. L. (Sc.) 449; *Elliot v. North Eastern Rail. Co.* (1863), 10 H. L. C. 333; 32 L. J. Ch. 402; *North Eastern Rail. Co. v. Crosland* (1863), 32 L. J. Ch. 353; *In re Corporation of Huddersfield and Jacomb* (1874), L. R. 10 Ch. 92; 44 L. J. Ch. 96; *In re Corporation of Dudley* (1881), 8 Q. B. D. 86; 51 L. J. Q. B. 121; cf. *Consett Waterworks Co. v. Ritson* (1889), 22 Q. B. D. 318, 702; *Grat Western Rail. Co. v. Cefn Cribbwr Brick Co.*, [1894] 2 Ch. 157; 63 L. J. Ch. 500; *North British Rail. Co. v. Turners, Ltd.* (1904), 6 F. (Ct. of Sess.) 900.

having reserved the mines, derogate from his own conveyance by removing that support. This obligation results from the position into which the parties have placed themselves by their contract (*l*).

When the sale of the surface lands does not diminish in any way the right of the owner to work the minerals under the surface in the manner usual in the district, the owner in respect of such minerals suffers no loss, and is entitled to no compensation.

Provisions as
to sewers.

In *In re Corporation of Dudley* (*m*), it was held that the Public Health Act, 1875 (38 & 39 Vict. c. 55), imposes on landowners, through whose land a sewer is run under that Act, an obligation to preserve to the sewer subjacent support, and gives them a right to immediate compensation for being deprived of the power to work subjacent mines, but not for the risk of percolation of sewage into subjacent mines. The question of lateral support did not arise in this case, but it was decided on the general rule of law that where the legislature gives power to a public body to do anything of a public character, the legislature means also to give to the public body all rights without which the power would become unavailable, although such a meaning cannot be implied in relation to circumstances arising accidentally only. The effect of this decision was to throw on local authorities proceeding under the Public Health Act, 1875, an obligation to pay compensation in the first instance for interference with mineral rights where such rights could not be exercised without affecting the necessary subjacent support to a sewer. Hence was passed the Public Health Act, 1875 (Support of Sewers) Amendment Act, 1883 (46 & 47 Vict. c. 37) (*n*), which applies (*o*) to local authorities the provisions (*p*) of the Waterworks Clauses Act, 1847, with respect to mines, and defines the expression "support" to include vertical and lateral support. The effect is that (except in cases where the saving clause (section 5) of the Act of 1883 applies (*q*)) the local authority under the Public Health Acts, 1875 to 1907, is not bound to acquire, in the first instance, vertical or lateral support, and the necessity of making

(*l*) *Birmingham, &c. Banking Co. v. Ross* (1888), 38 Ch. D. 295, 308; 57 L. J. Ch. 601; *Rigby v. Bennett* (1882), 21 Ch. D. 559.

(*m*) (1881), 8 Q. B. D. 86; 51 L. J. Q. B. 121; discussed in *Jary v. Barnsley Corporation*, [1907] 2 Ch. 600.

(*n*) Appendix, p. 512.

(*o*) S. 3.

(*p*) Ss. 18—27.

(*q*) *Jary v. Barnsley Corporation*, [1907] 2 Ch. 600.

compensation does not arise until it is proposed to work the mines in question in such a manner as to affect the vertical or lateral support necessary for the maintenance of the sewer. The case of *Metropolitan Board of Works v. Metropolitan Rail. Co.* (*r*) is not inconsistent, since it was held under the special statute that the local authority had not by prescription or under the special Act acquired a right of lateral support, and were therefore not entitled to recover compensation. If in this case an easement had been acquired, the claim for compensation could have been maintained (*s*).

In the case of railways which are constructed under the provisions of the Railways Clauses Consolidation Act, 1845, it has been held that within the limits prescribed by section 78 of the Act the statutory purchaser cannot claim the benefit of the right of an ordinary purchaser of the surface to subjacent and adjacent support, the statute having created a specific law for such matters by which alone the rights of the company and the mine owners are regulated (*t*). "The relation so established between seller and purchaser in regard to all minerals which may be held to be excepted is clearly defined, useful to the promoters, and at the same time fair and just to the mine owner. The latter, who is forced to part with the surface of his land and all uses for which it is available, is not compelled to sell his minerals whilst he is not in a position to ascertain their marketable value or the impediments which might be occasioned to the convenient working of his mineral field by his parting with a strip which intersects it. On the other hand, those who deprive him of the right to a portion of the surface and its uses by compulsory purchase enjoy the benefit of subjacent and adjacent support to their works without payment so long as the minerals below or adjoining these works remain undisturbed; but it is upon the condition that if they desire such support to be continued they must make full compensation for value and intersectional damage whenever the minerals required for that

In case of railways and waterworks a specific law.

(*r*) (1868), L. R. 3 C. P. 612; 4 C. P. 192; 37 L. J. C. P. 281.

(*s*) *North London Rail. Co. v. Metropolitan Board of Works* (1859), 28 L. J. Ch. 909; *In re Pettiward and Metropolitan Board of Works* (1865), 34 L. J. C. P. 301.

(*t*) *Great Western Rail. Co. v. Bennett* (1866), L. R. 2 H. L. 27; *In re Lord Gerard and London and North Western Rail. Co.*, [1895] 1 Q. B. 459: the *fasciculus* of sections in question (ss. 77—85) has been referred to as a "new code."

purpose are approached in working and would in due course be wrought out" (*u*). Similar considerations would apply to waterworks or any undertaking carried out under similar powers (*x*).

As between vendor and vendee, however, the mining sections (sections 77—85) of the Railways Clauses Consolidation Act, 1845, so far as support is concerned, do not apply to mines outside the prescribed limit; consequently, as between a vendor of land to a railway company and the railway company, upon a purchase subject to those sections, the railway company enjoys a natural right of support for its railway from minerals belonging to the vendor lying under other lands outside the prescribed limit (*y*); and where there is authority but no compulsory power to purchase, land so purchased carries with it all the common law right of support both subjacent and adjacent (*z*), even though there may be an obligation on the mine-owner to comply with some of the statutory provisions (*z*).

Mines under railways.

A railway company purchasing under the Railways Clauses Consolidation Act, 1845, land for the purposes of a railway does not become entitled to the mines under such land. The owner may work them after notice given under the terms of the statute up to and under the railway according to the usual manner of working such mines in the district, unless the company give compensation for the minerals. A purchaser from a railway company has no greater rights to the support of the surface land than the railway company from whom he has derived his title, and the owner, lessee, or occupier of the mines and minerals has a right to work the same according to the manner usual in the district, although such working may let down the surface (*a*). An owner who has granted to a railway company the right to make and maintain a tunnel through his land, has the same rights as to working the mines as if the company had actually purchased

(*u*) *Lord Provost, &c. of Glasgow v. Farie* (1888), 13 App. Cas. 657, at p. 675, *per* Lord Watson, quoting Lord Westbury in *Great Western Rail. Co. v. Bennett* (1867), L. R. 2 H. L. 27, at p. 42; cf. *Great Western Rail. Co. v. Fletcher* (1860), 29 L. J. Ex. 253.

(*x*) *Cf. Holliday v. Mayor, &c. of Wakefield*, [1891] A. C. 81; 60 L. J. Q. B. 361; *post*, p. 134; *Earl of Carlisle v. Northumberland C. C.* (1911), 105 L. T. 797.

(*y*) *Howley Park Coal and Tunnel Co. v. London and North Western Rail. Co.*, [1913] A. C. 11.

(*z*) *New Moss Colliery, Ltd. v. Manchester Corporation*, [1908] A. C. 117. The decision in this case had reference to the Waterworks Clauses Act, 1847.

(*a*) *Pountney v. Clayton* (1883), 11 Q. B. D. 820; 52 L. J. Q. B. 566.

the land (*b*). Where an owner gives notice under section 78 of the Railways Clauses Act, 1845, of his intention to work minerals within the prescribed distance, and the company is willing to make compensation, the provisions of the Lands Clauses Acts are applicable in assessing the amount: on the other hand, if the claim is made exclusively under section 81, the amount would be settled not under the Lands Clauses Acts but by arbitration (*c*).

Notice by owner of intention to work minerals.

A notice under section 78 is not valid unless there is at the time an honest actual existence of the desire to work either by the owner or the lessee (*d*).

Must be *bona fide*.

Where a company give a counter notice requiring the mine-owner not to work, and stating their willingness to make compensation, there is not a purchase of the mines or minerals, or a transfer of the property in the mines or minerals (*e*). The compensation should be assessed not on the value of the minerals at the date of the counter notice, but on the amount which the mineral owner would have made out of the minerals during the time it would have taken him to get them if he had not been prohibited from working by the service of the counter notice (*f*). In the ordinary way this will be the price the minerals would fetch as and when won and raised, less the cost of working the mine, winning and raising them (*g*). But where the minerals have no market value in the strict sense their value may be what the owner might fairly be expected to have made out of them by working them in the ordinary and reasonable manner in his own business; the value is not affected by the fact that the claimant owns large quantities of other similar minerals which he might have worked instead (*h*). The arbitrator

Counter notice.

(*b*) *London and North Western Rail. Co. v. Ackroyd* (1862), 31 L. J. Ch. 588.

(*c*) *R. v. London and North Western Rail. Co.*, [1894] 2 Q. B. 512; 63 L. J. Q. B. 695.

(*d*) *Midland Rail. Co. v. Robinson* (1890), 15 App. Cas. 19, at p. 32; 59 L. J. Ch. 442; cf. *Dixon v. Caledonian Rail. Co.* (1880), 5 App. Cas. 820; *North British Rail. Co. v. Budhill Coal and Sandstone Co.*, [1910] A. C. 116.

(*e*) *Great Northern Rail. Co. v. Inland Revenue Commissioners*, [1901] 1 K. B. 416; 70 L. J. K. B. 336. The promoters cannot call for a conveyance: *Hamilton's (Duke) Trustees v. Caledonian Rail. Co.* (1905), 7 F. 847.

(*f*) *In re Bwlfa and Merthyr Dare Collieries Co. and Pontypridd Water-works Co.*, [1903] A. C. 426; 72 L. J. K. B. 805. *Fletcher v. Lancashire and Yorkshire Rail. Co.*, [1902] 1 Ch. 901, was decided on the special terms of a private Act. For the method of distribution of the compensation between a tenant for life and a remainderman, *vide post*, p. 258.

(*g*) *Eden v. North Eastern Rail. Co.*, [1907] A. C. 400.

(*h*) *Eden v. North Eastern Rail. Co.*, [1907] A. C. 400; *Rugby Portland Cement Co. v. London and North Western Rail. Co.*, [1908] 2 K. B. 606, in

has no jurisdiction to award interest between the date of the counter notice and his award (*i*).

**Mines under
waterworks.**

The sections of the Waterworks Clauses Act, 1847, relating to mines and minerals (*k*) have been fully considered, and it has been decided that these sections, as in the case of the Railways Clauses Act, 1845, constitute a special code relating to mines and their working. It was held that the word "lands" in section 6 of the Railways Clauses Act, 1845 (*l*), and section 6 of the Waterworks Clauses Act, 1847 (*m*), includes "mines," and that it was competent to give a notice to treat including such subjacent minerals as the undertakers required to purchase and take (*n*). In *Holliday v. Mayor, &c. of Wakefield* (*m*), there were lower seams of minerals, and the arbitrator found that by reason of the undertakers' works and of apprehension of injury therefrom to one seam, the mine owners could not get more than 50 per cent. of the coal under the reservoir or within twenty yards of its boundary, and that a prudent lessee working without a right to compensation would be compelled by reason of such apprehension of injury to abstain from working more than 50 per cent. of the coal within the defined area. It was held that the claim was premature and that no compensation in respect of the apprehended injury could be claimed or recovered under the mines sections of the Waterworks Clauses Act, 1847, and that prospective prevention did not constitute a present claim for compensation (*o*). Section 27 of the Waterworks Clauses Act, 1847, differs from any section found in the Railways Clauses Act, 1845, and gives a right of action for any damage or injury done or occasioned by means or in consequence of the waterworks to the same extent as if they had not been con-

which case the claimants used the minerals for their adjoining cement factory; it was held that the profits they would have made by turning the minerals into cement might properly be taken into consideration as an indication, though not as a measure, of the value.

(*i*) *In re Richard and Great Western Rail. Co.*, [1905] 1 K. B. 68; 74 L. J. K. B. 9.

(*k*) Ss. 18—27; Appendix, p. 463.

(*l*) *Smith v. Great Western Rail. Co.* (1877), 3 App. Cas. 165; 47 L. J. Ch. 97; *Errington v. Metropolitan District Rail. Co.* (1882), 19 Ch. D. 559; 51 L. J. Ch. 305.

(*m*) *Holliday v. Mayor, &c. of Wakefield*, [1891] A. C. 81; 60 L. J. Q. B. 361.

(*n*) Cf. *In re Huddersfield Corporation and Jacomb* (1874), L. R. 10 Ch. 92; 44 L. J. Ch. 96.

(*o*) *Holliday v. Mayor, &c. of Wakefield*, [1891] A. C. 81, 87, 100; 60 L. J. Q. B. 361.

structed or maintained under statutory powers (o). The special code only applies where there are compulsory powers; and where promoters bought land under a special Act, which gave them power to purchase land by agreement but not compulsorily, and incorporated the Act of 1847, it was held that the land so bought enjoyed the ordinary common law right to lateral support to the exclusion of the rights given under the special code (p).

Compensation under the mines and minerals sections of the Railways Clauses Act, 1845 (q), and of the Waterworks Clauses Act, 1847 (r), cannot be claimed or recovered for apprehended or prospective damage, but must be assessed as at the time when the owner under the terms of those sections is prevented from working his minerals in the manner usual in the district. In assessing the amount, the mine owner is entitled to give evidence to prove that coal has risen in value after the date of the counter notice (s).

Compensation not payable for prospective damage to mines.

A counter notice to the owner or lessee of mines and minerals lying under a railway may be given under the Railways Clauses Consolidation (Scotland) Act, 1845, after the expiration of the thirty days specified in section 72 (t). The same principle would apply in England with regard to the corresponding section 78 (u).

Time within which counter notice may be given.

An owner or lessee of mines under adjoining lands is entitled to compensation under section 81 of the Railways Clauses Act, 1845, for additional expense incurred through the difficulty of obtaining access by tunnelling under a railway (x). He is not entitled to claim access over a railway, since this would constitute a trespass (x).

Extra cost of working.

(o) *Holliday v. Mayor, &c. of Wakefield*, *supra*.

(p) *New Moss Colliery, Ltd. v. Manchester Corporation*, [1908] A. C. 117, in which the effect of ss. 22, 23 of the Act of 1847 was considered.

(q) *Great Western Rail. Co. v. Bennett* (1866), L. R. 2 H. L. 27; 36 L. J. Q. B. 133; *Smith v. Great Western Rail. Co.* (1877), 3 App. Cas. 165; 47 L. J. Ch. 97; cf. *Whitehouse v. Wolverhampton Rail. Co.* (1869), L. R. 5 Ex. 6; 39 L. J. Ex. 1; *Hanley Coal Co. v. North Staffordshire Rail. Co.* (1891), 64 L. T. 656; *In re Lord Gerard and London and North Western Rail. Co.*, [1895] 1 Q. B. 459.

(r) *Holliday v. Mayor, &c. of Wakefield*, [1891] A. C. 81; 60 L. J. Q. B. 361.

(s) *In re Bwllfa and Merthyr Dare Collieries Co. and Pontypridd Waterworks Co.*, [1903] A. C. 426; 72 L. J. K. B. 805.

(t) *Dixon v. Caledonian Rail. Co.* (1880), 5 App. Cas. 820.

(u) The dictum of Lord Cairns, L. C., *contra*, in *Smith v. Great Western Rail. Co.* (1877), 3 App. Cas. 165; 47 L. J. Ch. 97, is referred to and dis-sented from in *Dixon v. Caledonian Rail. Co.* (1880), 5 App. Cas. 820.

(x) *Midland Rail. Co. v. Miles* (1885), 30 Ch. D. 634; 55 L. J. Ch. 251; cf. *S. C.* (1886), 33 Ch. D. 632; 55 L. J. Ch. 745.

When promoters have paid compensation under the mines and minerals sections of Railways Clauses Act, 1845, or of the Waterworks Clauses Act, 1847, they cannot demand a conveyance of the minerals for the non-working of which compensation has been paid (*y*).

Powers of promoters to purchase mines.

The specific provisions contained in the Railways Clauses Act, 1845, do not prevent a railway company from purchasing any mines or minerals within the limits of their powers, and which they require for the purposes of their undertaking (*z*). They can purchase mines when purchasing the surface, or, if they have purchased the surface first, there is nothing to prevent them giving a subsequent notice to treat for mines or minerals. The company, so long as they act *bonâ fide*, are judges as to whether the mines they propose to purchase are required for their undertaking (*a*).

What included under minerals.

The expression "mines of coal, ironstone, slate or other minerals," in section 77 of the Railways Clauses Act, 1845, and section 18 of the Waterworks Clauses Act, 1847, and the words "mines or minerals" in section 78 of the Railways Clauses Act, 1845, and section 22 of the Waterworks Clauses Act, 1847, include not only beds and seams of minerals got by underground working, but also such as can only be worked, and according to the custom of the district would be properly worked, by open or surface operations (*b*).

The words "mines of" have relation not only to the word "coal," but to the words "ironstone, slate or other minerals" also (*c*). The meaning of the words "other minerals" was for many years the subject of a number of contradictory decisions (*d*),

(*y*) *Duke of Hamilton's Trustees v. Caledonian Rail. Co.* (1905), 7 F. 847.

(*z*) *Birmingham Canal Co. v. Cartwright* (1879), 11 Ch. D. 421; 48 L. J. Ch. 552.

(*a*) *Errington v. Metropolitan District Rail. Co.* (1882), 19 Ch. D. 559; 51 L. J. Ch. 305; *Stockton and Darlington Rail. Co. v. Brown* (1860), 9 H. L. C. 246.

(*b*) *Midland Rail. Co. v. Robinson* (1889), 15 App. Cas. 19; 59 L. J. Ch. 442; *Ruabon Brick and Terra Cotta Co. v. Great Western Rail. Co.*, [1893] 1 Ch. 427; 62 L. J. Ch. 483.

(*c*) *Lord Provost, &c. of Glasgow v. Farie* (1888), 13 App. Cas. 657, at pp. 676, 683, 686; 58 L. J. P. C. 33; *Midland Rail. Co. v. Robinson* (1890), 15 App. Cas. 19, at pp. 27, 33; 59 L. J. Ch. 442.

(*d*) *North British Rail. Co. v. Budhill Coal and Sandstone Co.*, [1910] A. C. 116 (sandstone), *per Loreburn, L. C.*, at p. 125; the several interpretations which have been suggested are set out and discussed in Lord Gorell's judgment at

and the proper test to be applied was not finally laid down till the decisions of the House of Lords in *North British Rail. Co. v. Budhill Coal and Sandstone Co.* (d), *Great Western Rail. Co. v. Carpalla United China Clay Co., Ltd.* (e), *Caledonian Rail. Co. v. Glenboig Union Fireclay Co.* (f). In the latter case the principle of the decision in the *Budhill* and *Carpalla* cases is set out by Loreburn, L. C., as follows :—"The Court has to find what the parties must be taken to have bought and sold respectively, remembering that no definition of "minerals" is attainable, the variety of meanings which the use of the word "minerals" admits of being itself the source of all the difficulty. It must be taken that what the railway company intended to get and the landowner intended to give was the land under the line, for the object was to give, not a wayleave, but a support. I say this speaking generally. Upon the other hand, if anything exceptional in use, character, or value was thereunder, that was reserved, provided it could be included under the word "minerals" as understood in the vernacular of the mining world, and the commercial world, and the landowner." Whether any particular substance is included in the term "minerals" is a question of fact in each case (g).

p. 130. The earlier cases are as follows :—*Midland Rail. Co. v. Checkley* (1867), L. R. 4 Eq. 19 (stone); *Jamieson v. North British Rail. Co.* (1868), 6 S. L. R. 188 (sandstone); *Dixon v. Caledonian Rail. Co.* (1880), 5 App. Cas. 820 (limestone); *Errington v. Metropolitan District Rail. Co.* (1882), 19 Ch. D. 559 (clay); *Midland Rail. Co. v. Haunchwood Brick and Tile Co.* (1882), 20 Ch. D. 552 (clay); *Loosemore v. Tiverton, &c. Rail. Co.* (1882), 22 Ch. D. 25 (clay); *Midland Rail. Co. v. Miles* (1886), 33 Ch. D. 632 (clay); *Lord Provost, &c. of Glasgow v. Farie* (1888), 13 App. Cas. 657 (clay); *Midland Rail. Co. v. Robinson* (1890), 15 App. Cas. 19 (limestone); *Ruabon Brick and Terra Cotta Co. v. Great Western Rail. Co.*, [1893] 1 Ch. 427 (clay); *Glasgow and South Western Rail. Co. v. Bain* (1893), 21 R. 134 (sandstone); *Great Western Rail. Co. v. Blades*, [1901] 2 Ch. 624 (blue brick clay); *In re Todd, Birlestone & Co. and North Eastern Rail. Co.*, [1903] 1 K. B. 603 (clay); *North British Rail. Co. v. Turners, Ltd.* (1904), 6 F. 900 (clay); *Forth Bridge Rail. Co. v. Dunfermline Guildry*, [1910] S. C. 316 (whinstone); and the case of *Linlithgow (Marquess) v. North British Rail. Co.*, [1912] S. C. 1327; [1914] A. C. 820, under a special Act (oil shale).

(e) [1910] A. C. 83 (china clay).

(f) [1911] A. C. 290 (fireclay). These decisions substantially re-established the interpretation adopted by Lord Halsbury in *Lord Provost, &c. of Glasgow v. Farie* (1888), 13 App. Cas. 657, at p. 668, approving the interpretation of "mines and minerals" reserved in a grant suggested by James, L. J., in *Hext v. Gill* (1872), L. R. 7 Ch. 699, at p. 719. And see *Commonwealth of Australia v. Hazeldell, Ltd.*, [1921] 2 A. C. 373.

(g) *Symington v. Caledonian Rail. Co.*, [1912] A. C. 87 (freestone or sandstone).

The words are equivalent to the expression "mines and minerals" in common use with conveyancers (*h*). The time as at which the test is to be applied is the time when the purchase of the lands was effected (*i*).

When the evidence given as to common meaning is evidence given of the common meaning at the present day, the Court will assume that it was the same at the time of the sale, unless sufficient ground is given for coming to a contrary conclusion (*k*).

Ownership
of land ac-
quired under
statutory
powers.

The owners of lands acquired under statutory powers have the ordinary rights of proprietors, and may use their land as they think fit for any purpose which does not infringe the rights of others and is not inconsistent with the purposes sanctioned by the Act of Parliament under which the lands have been taken (*l*). Having duly acquired any necessary land and easements, &c., the promoters have full power to complete their railway by the exercise of their common law powers as landowners, although the statutory limit for the completion of works has come to an end (*m*).

Adverse
possession.

An occupier who has exclusive adverse possession for twelve years gains a title to land under the Statutes of Limitation, although such land may be required for the purposes of the undertaking of a railway company and has not become superfluous (*n*). This principle applies to land over a tunnel (*o*).

(*h*) *Great Western Rail. Co. v. Carpalla United China Clay Co., Ltd.*, [1910] A. C. 83, *per* Lord Macnaghten, all the other Lords concurring; *cf.* *Loreburn, L. C.*, at p. 127, in the *Budhill case*, *supra*.

(*i*) *Per* *Loreburn, L. C.*, at p. 128, in the *Budhill case*, *supra*.

(*k*) *Per* *Loreburn, L. C.*, at p. 299, in the *Glenboig case*, *supra*.

(*l*) *R. v. Leake* (1833), 5 B. & Ad. 469; *Swindon Waterworks Co. v. Wilts and Berks Canal, &c. Co.* (1875), L. R. 7 H. L. 697; 45 L. J. Ch. 638; *Bonner v. Great Western Rail. Co.* (1883), 24 Ch. D. 1; *Bayley v. Great Western Rail. Co.* (1884), 26 Ch. D. 434, 456; *Grand Junction Canal Co. v. Petty* (1888), 21 Q. B. D. 273; 57 L. J. Q. B. 572; *Foster v. London, Chatham and Dover Rail. Co.*, [1895] 1 Q. B. 711; 64 L. J. Q. B. 65; *In re Gonty and Manchester, Sheffield and Lincolnshire Rail. Co.*, [1896] 2 Q. B. 439; 65 L. J. Q. B. 625; *Att.-Gen. v. Teddington Urban District Council*, [1898] 1 Ch. 66; 67 L. J. Ch. 23; *Att.-Gen. v. Hanwell Urban District Council*, [1900] 2 Ch. 337; 69 L. J. Ch. 626; *cf. post*, pp. 304, 339; *Att.-Gen. v. Pontypridd U. D. C.*, [1906] 2 Ch. 257.

(*m*) *Midland Rail. Co. v. Great Western Rail. Co.*, [1909] A. C. 445; adopting the dictum of Lord Blackburn in *Tiverton, &c. Rail. Co. v. Loosemore* (1884), 9 App. Cas. 480, at p. 499.

(*n*) *Bobbett v. South Eastern Rail. Co.* (1882), 9 Q. B. D. 424; 51 L. J. Q. B. 161; *Norton v. London and North Western Rail. Co.* (1879), 13 Ch. D. 268; *cf. London and South Western Rail. Co. v. Gomm* (1882), 20 Ch. D. 562, 585; 51 L. J. Ch. 530.

(*o*) *Midland Rail. Co. v. Wright*, [1901] 1 Ch. 738; 70 L. J. Ch. 411.

The ordinary rules as to payment of interest on purchase-money apply when lands are acquired under statutory powers. If a date is fixed for the completion of the purchase, interest at four per cent. will become payable from such date; but if no date is fixed, and the vendor has shown his title, the promoters pay interest from the time at which they might prudently have taken possession, supposing it to have been offered them; that is, the time when a good title was shown (*p*). When the land is subject to mortgage, interest is payable to the mortgagee in lieu of notice (*q*). In the case of *In re Eccleshill Local Board* (*r*), it was held that interest on purchase-money was payable from the date on which the verdict of a jury assessing its amount had been given. The principle of this decision is inconsistent with that of Jessel, M. R., in *In re Pigott and Great Western Rail. Co.* (*s*), and this latter case is the one which would probably be followed (*t*). Interest on purchase-money ceases from the date of payment of the amount into Court, where the payment is made in accordance with the obligations of the Lands Clauses Acts (*u*).

Interest payable on purchase-money.

If the promoters have entered into the possession of lands under section 85 of the Lands Clauses Act, 1845, interest at the rate of five per cent. is payable from the date of entry, until the purchase-money or compensation has been paid. In all other cases in which the promoters enter on lands before the payment of the purchase-money, they are liable to pay interest at the rate of four per cent. from the time of entry, in accordance with the ordinary practice which regulates the liability of a purchaser to a vendor (*x*), taking into account, in the case of enfranchisement, any amounts

Where promoters in possession.

(*p*) *In re Pigott and Great Western Rail. Co.* (1881), 18 Ch. D. 146; 50 L. J. Ch. 679; *Binks v. Lord Rokeby* (1818), 2 Swanst. 222; cf. *Catling v. Great Northern Rail. Co.* (1869), 21 L. T. 769.

(*q*) *Re Spencer-Bell and London and South Western Rail. Co.* (1883), 33 W. R. 771.

(*r*) (1880), 13 Ch. D. 365; 49 L. J. Ch. 214; *Re Spencer-Bell and London and South Western Rail. Co.* (1883), 33 W. R. 771.

(*s*) (1881), 18 Ch. D. 146; 50 L. J. Ch. 679.

(*t*) See *Re Spencer-Bell and London and South Western Rail. Co.* (1883), 33 W. R. 771.

(*u*) *Lewis v. South Wales Rail. Co.* (1853), 22 L. J. Ch. 209.

(*x*) *Rhys v. Dare Valley Rail. Co.* (1874), L. R. 19 Eq. 93; *Birch v. Joy* (1852), 3 H. L. C. 565; *In re Shaw and Corporation of Birmingham* (1884), 27 Ch. D. 614; 54 L. J. Ch. 51; *In re Baltimore Extension Rail. Co., Ex parte Daly*, [1895] 1 Ir. R. 169; *Fletcher v. Lancashire and Yorkshire Rail. Co.*, [1902] 1 Ch. 901; 71 L. J. Ch. 590.

which the lord may have continued to receive in respect of rents and other manorial services (*y*).

If purchaser delays completion of purchase.

If the completion of a purchase is delayed through the default of the purchaser, he must pay interest, although not in possession and the purchase-money is lying idle ; but he is entitled to deduct any actual profit received by the vendor (*z*).

If vendor delays completion of purchase.

If the completion of a purchase is delayed through the default of the vendor, and the purchaser is in possession, or might prudently have taken possession under the title shown (*a*), interest is payable, unless the purchaser gives notice to the vendor that he has appropriated the purchase-money, and that it is lying idle (*b*).

The vendor must account to the purchaser for rents or profits received subsequently to the time when interest becomes payable ; and in the case of *Regent's Canal Co. v. Ware* (*c*), the vendor through whose default completion of the purchase had been delayed, was held liable to give an account of rents and profits received, although he could not claim interest, because the purchaser had given notice that the purchase-money had been appropriated and was lying idle.

On the other hand, where the vendor continues in possession not on account of the purchaser, but on his own behalf under a pressure arising from the purchaser's default, the purchaser is not entitled to any allowance by way of occupation rent (*d*).

The execution of a conveyance on payment of the amount of compensation awarded does not estop the owner from claiming interest on the amount awarded from the time of entering on the lands down to the date of payment (*e*).

In case of minerals.

Where under the provisions of a private Act the railway company gave notice to purchase the underlying minerals, it was held that interest was payable from the date of the company's notice, on the ground that from that date the company had kept the purchase-money and at the same time enjoyed the benefit of the

(*y*) *In re Duke of Northumberland and Tynemouth Corporation*, [1909] 2 K. B. 374, following *In re Marquis of Salisbury and London and North Western Rail. Co.* (1879), reported [1892] 1 Ch. 75, n.

(*z*) *Calcraft v. Roebuck* (1790), 1 Ves. Jr. 221.

(*a*) *Binks v. Lord Rokeby* (1818), 2 Swanst. 222.

(*b*) *Dyson v. Hornby* (1851), 4 De G. & Sm. 481; *Regent's Canal Co. v. Ware* (1857), 26 L. J. Ch. 566.

(*c*) (1857), 26 L. J. Ch. 566; cf. *In re Eccleshill Local Board* (1880), 13 Ch. D. 365; 49 L. J. Ch. 214.

(*d*) *Leggott v. Metropolitan Rail. Co.* (1870), L. R. 5 Ch. 716.

(*e*) *In re Baltimore Extension Rail. Co., Ex parte Daly*, [1895] 1 Ir. R. 169.

purchased seam (*f*). It is submitted that there was no power in the arbitrator to award interest, but this point became immaterial, since his award of 4 per cent. amounted to the same sum as would have been payable on equitable principles (*f*). Where no interest was awarded, although a sheriff's jury had found in 1864, that so far back as 1852 the owner was entitled to the amount in question, it was held that the right to interest did not commence until the amount had been settled, and that in such a case interest could only be demanded by virtue of a contract, or where the principal sum had been wrongly withheld (*g*).

The question of interest when compensation is assessed for loss consequent on the owner being prevented from working his mines or minerals by reason of a counter-notice given under the Railways Clauses Act, 1845, depends on different considerations from the payment of interest where lands are purchased, and in such a case the arbitrator has no jurisdiction to award an amount under the head of interest (*h*).

The fact that lands have been taken under compulsory process does not alter the principle of valuation, and the customary addition of 10 per cent. can only be justified as a part of the valuation and not as an addition thereto. In practice the 10 per cent. is applied to the value of lands only, and not to incidental damage; this percentage may be taken to cover various incidental costs and charges to which an owner is subject whose land has been taken, and if no percentage were added such incidental costs and charges would have to be considered in assessing the amount of compensation.

Allowance for compulsory purchase.

In *In re Athlone Rifle Range* (*i*), an addition of 20 per cent. was disapproved. In *Jervis v. Newcastle Waterworks Co.* (*k*), an amount added for compulsory purchase was disallowed on the ground that the purchase was not compulsory. In certain public Acts (*l*), and notably in the Acquisition of Land (Assessment of Compensation) Act, 1919 (*m*), it is provided that no additional allowance shall be made for compulsory purchase.

(*f*) *Fletcher v. Lancashire and Yorkshire Rail. Co.*, [1902] 1 Ch. 901; 71 L. J. Ch. 590; following *Birch v. Joy* (1852), 3 H. L. C. 565.

(*g*) *Caledonian Rail. Co. v. Carmichael* (1870), L. R. 2 H. L. (Sc.) 56.

(*h*) *In re Richard and Great Western Rail. Co.*, [1905] 1 K. B. 68; 74 L. J. K. B. 9.

(*i*) [1902] 1 Ir. R. 433.

(*k*) (1897), 13 Times L. R. 14, 312.

(*l*) Cf. Housing of the Working Classes Act, 1890, s. 21 (1) (*a*), *post*, pp. 359, 532; Local Government Act, 1894, s. 9 (10), *post*, p. 517.

(*m*) *Post*, p. 321.

CHAPTER IX.

COMPENSATION FOR LANDS INJURIOUSLY AFFECTED.

Compensation
for lands
injuriously
affected.

THE value of lands purchased or taken under parliamentary powers does not comprise all the compensation which owners are entitled to claim. When lands, not taken, have been injuriously affected by the execution of the authorized works, the owner is entitled to claim compensation for the resulting damage.

Lands
injuriously
affected may
or may not
be held with
lands pur-
chased.

There is an important difference between a claim made for injury which it is alleged will be sustained by lands held with lands purchased or taken, and a claim for injury which has already been suffered by the owner of adjoining lands, none of whose lands are required to be or have been purchased or taken. In the former case, unless an owner is content to allow the question of compensation to stand over until after the execution of the works of the undertaking, the tribunal which assesses the amount of purchase-money payable in respect of lands taken or required, estimates at the same time the amount of anticipated damages (*a*). In the latter case, the assessment of damage cannot effectively be made until the works, by which it is caused, have been more or less fully completed (*b*).

Moreover, the principles on which compensation for injury is based where lands of the same owner are taken differ materially from those applicable where no land of the same owner has been taken (*c*).

So many questions have arisen on the principle of the assessment of compensation where lands have been injuriously affected by the

(*a*) *Caledonian Rail. Co. v. Lockhart* (1860), 3 Macq. H. L. (Sc.) 808; *Croft v. London and North Western Rail. Co.* (1863), 32 L. J. Q. B. 113; cf. *Whitehouse v. Wolverhampton Rail. Co.* (1869), L. R. 5 Ex. 6; 39 L. J. Ex. 1.

(*b*) *Macey v. Metropolitan Board of Works* (1864), 33 L. J. Ch. 377; *Stone v. Mayor, &c. of Yeovil* (1876), 2 C. P. D. 99; 46 L. J. C. P. 137; *R. v. Poulter* (1887), 20 Q. B. D. 132; 57 L. J. Q. B. 138.

(*c*) *In re Stockport, Timperley and Altrincham Rail. Co.* (1864), 33 L. J. Q. B. 251; *Cowper Essex v. Acton L. B.* (1889), 14 App. Cas. 153; 58 L. J. Q. B. 594.

execution of works carried out under statutory powers, that it will be useful to refer at the outset to the sections of the Lands, Railways and Waterworks Clauses Acts, which specially relate to this subject.

Under section 9 of the Lands Clauses Act, 1845, which applies in case of parties under disability, the compensation to be paid includes permanent damage or injury to "any such lands" (*d*). In reference to this section it should be noted that whether injury is permanent or temporary, it affects the amount of compensation, but not the title to recover (*e*).

Provisions of
L. Cl. Act,
1845.

In section 18 it is enacted that the notice to treat shall state the particulars of the lands required, and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works.

In section 38, the promoters of the undertaking, in giving notice to the other party of their intention to cause a jury to be summoned, are required to state in such notice what sum of money they are willing to give for the interest in lands sought to be purchased by them from such party, and for the damage to be sustained by him by the execution of the works.

Section 49 enacts that where the inquiry relates to the value of lands to be purchased, and also to compensation for injury done or to be done to lands held therewith, the jury shall deliver their verdict separately for the value of such lands, and for the sum of money to be paid by way of compensation for the damage, if any, to be sustained by the owner of the lands, by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such lands by the exercise of the powers of that or the special Act or any Act incorporated therewith. This section does not make it obligatory upon a jury to deliver a separate verdict for the value of land and for compensation for damage; but it enables either party to claim a separate assessment. It should be noted that the words "injury" and "injuriously affected" occur for the first time in this section (*f*).

Section 58, which deals with compensation to absent parties, provides for the valuation of the purchase-money and the compensation to be paid for any permanent injury to lands.

(*d*) *Stone v. Mayor, &c. of Yeovil* (1876), 2 C. P. D. 99; 46 L. J. C. P. 137.

(*e*) *Vide post*, p. 157.

(*f*) *Re Bradshaw's Arbitration* (1848), 17 L. J. Q. B. 362.

Section 63 enacts that, in estimating the purchase-money or compensation to be paid by the promoters, regard shall be had by the justices, arbitrators, or surveyors, as the case may be, not only to the value of the land to be purchased or taken, but also to the damage, if any, to be sustained by the owner by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of the powers of that or the special Act or any Act incorporated therewith. This section, in practice, enables either party to claim a separate assessment of compensation and purchase-money.

Section 68 gives the procedure to be followed when any party is entitled to any compensation in respect of any lands or of any interest therein which shall have been taken for or injuriously affected by the execution of the works. This section includes parties who but for the Act would be under disability or incapacity (*g*).

Section 85 provides for the amount to be deposited if the promoters are desirous of entering upon and using lands before an agreement shall have been come to or an award made or verdict given for the purchase-money or compensation to be paid by them in respect of such lands.

In assessing the amount to be deposited under section 85 of the Lands Clauses Act, 1845, a surveyor should take into consideration, not only the actual value of the lands taken, but also the amount of compensation to which an owner is entitled for severance or other injury done to lands held therewith (*h*).

Provisions of
R. Cl. Act,
1845.

Section 6 of the Railways Clauses Act, 1845, enacts that the company shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of the railway or injuriously affected by the construction thereof full compensation for the value of the lands so taken or used, and for all damage (*i*) sustained by such owners, occupiers, and other parties, by reason of the exercise, as regards such lands, of the powers by that or the special Act or any Act incorporated therewith vested in the company.

(*g*) *Stone v. Mayor, &c. of Yeovil* (1876), 2 C. P. D. 99; 46 L. J. C. P. 137.

(*h*) *Field v. Carnarvon and Llanberis Rail. Co.* (1867), L. R. 5 Eq. 190; 37 L. J. Ch. 176; and cf. the Railway Companies Act, 1867 (30 & 31 Vict. c. 127), s. 36, sub-s. 3, Appendix, p. 458.

(*i*) As to damage to goods, see *Knock v. Metropolitan Rail. Co.* (1868), L. R. 4 C. P. 131.

Section 16 empowers the company, subject to the provisions and restrictions in that and the special Act and any Act incorporated therewith for the purpose of constructing the railway or the accommodation works connected therewith, to execute certain specified works: provided always that in the exercise of the powers by that or the special Act granted the company shall do as little damage as can be, and shall make full satisfaction in manner therein and in the special Act and in any Act incorporated therewith provided to all parties interested for all damage by them sustained by reason of the exercise of such powers.

The above sections 6 and 16, though frequently referred to in argument, do not in the case of railways introduce any special principle as to injuriously affecting different from that applied in the case of other works carried out under statutes which incorporate the Lands Clauses Acts (*k*).

Sections 6, 12, and 28 of the Waterworks Clauses Act, 1847, deal with the question of compensation for injuriously affecting lands and streams. The wording of the two former sections, though somewhat similar to sections 6 and 16 of the Railways Clauses Act, 1845, differs in some important particulars, so that for certain purposes cases decided under one Act form no true guide to the interpretation of the other (*l*).

Provisions of
Waterworks
Clauses Act,
1847.

Section 6 of the Waterworks Clauses Act enacts that where by the special Act the undertakers shall be empowered, for the purpose of constructing or supplying waterworks, to take or use any lands or streams otherwise than with the consent of the owners and occupiers thereof, they shall be subject to the provisions and restrictions contained in that Act, and to the provisions and restric-

(*k*) *Caledonian Rail. Co. v. Ogilvy* (1856), 2 Macq. H. L. (Sc.) 229; *Ricket v. Metropolitan Rail. Co.* (1867), L. R. 2 H. L. 175; 36 L. J. Q. B. 205; *Hammersmith Rail. Co. v. Brand* (1869), L. R. 4 H. L. 171; 38 L. J. Q. B. 265; *Att.-Gen. v. Metropolitan Rail. Co.*, [1894] 1 Q. B. 384; but see *In re London, Tilbury, &c. Rail. Co. and Gower's Walk Schools* (1889), 24 Q. B. D. 326, 330, 331; 59 L. J. Q. B. 162.

(*l*) *Fletcher v. Birkenhead Corporation*, [1907] 1 K. B. 205. The judgment in this case emphasizes the difference between the two different sets of sections, but the only specific distinction in principle which has been laid down is to be found in this case and in *Harpur's case* (*post*); it would appear that in other respects the sections are comparable and the principles to be derived from them the same. See *post*, p. 160; cf. *Bush v. Trowbridge Waterworks Co.* (1875), L. R. 10 Ch. 459.

tions contained in the Lands Clauses Consolidation Act, 1845; and shall make to the owners and occupiers of and all other parties interested in any lands or streams taken or used, or injuriously affected by the construction or maintenance of the works, or otherwise by the execution of the powers conferred by the special Act, full compensation for the value of the lands and streams so taken or used, and for all damage sustained by such owners, occupiers, and other persons, by reason of the exercise, as to such lands and streams, of the powers vested in the undertakers by that Act or the special Act, or any Act incorporated therewith. The term "lands" has the same meaning as in the Lands Clauses Act, 1845, s. 3 (*m*), and the term "streams" includes "springs, brooks, rivers, or other running waters" (*m*).

Section 12 empowers the undertakers, subject to the provisions and restrictions in that and the special Act, and any Act incorporated therewith, to execute certain specified works for constructing the waterworks:

Provided always, that in the exercise of the said powers the undertakers shall do as little damage as can be, and in all cases where it can be done shall provide other watering places, drains, and channels for the use of adjoining lands, in place of any such as shall be taken away or interrupted by them, and shall make full compensation to all parties interested for all damage sustained by them through the exercise of such powers.

Section 28 empowers the undertakers, under such superintendence as is thereafter specified, to open and break up the soil and pavement of the several streets and bridges within the limits of the special Act; and to open and break up any sewers, drains, or tunnels within or under such streets and bridges (*n*), and lay down and place within the same limits pipes (*n*), conduits, service pipes, and other works and engines, and from time to time repair, alter, or remove the same, and for the purposes aforesaid remove and use all earth and materials in and under such streets and bridges, and do all other acts which the undertakers shall from time to time deem necessary for supplying water to the inhabitants of the district included within the said limits, doing as little damage as can be in the execution of the powers thereby or by the

(*m*) S. 3, Waterworks Clauses Act, 1847; see *ante*, p. 8.

(*n*) *Lord Provost of Glasgow v. Glasgow and South Western Rail. Co.*, [1895] A. C. 376.

special Act granted, and making compensation for any damage which may be done in the execution of such powers (*o*).

The words "for the purpose of constructing or supplying water-works" in section 6 include both the constructing of the requisite works and appliances for taking, storing, and distributing the water and also the subsequent supply of water necessary really to constitute them waterworks (*p*). The word "maintenance" in that section includes matters going beyond construction and enlarges the effect of the words "or otherwise by the execution of the powers thereby conferred" so as to cover damage occasioned otherwise than by mere works of construction (*q*).

The procedure to be adopted for the assessment of the amount of compensation is the same in all the above cases and is given subsequently (*r*). It is proposed to consider, in the present chapter, what are the conditions which entitle an owner to claim compensation for injury, when damage has resulted from the exercise of statutory powers.

Even where the special Act contains no substantive provisions, the Lands Clauses Act, 1845, taken as a whole, gives the owner of lands, which have been injuriously affected, a right to claim compensation (*s*). Section 68 forms one of a series of clauses commencing at section 16, and is included under the heading, "And with respect to the purchase and taking of lands, otherwise than by agreement, be it enacted as follows;" and it is improbable that a case would arise in which section 68 only would be incorporated in a special Act, and not the whole series of sections commencing with section 16, and comprised under the same heading; but the balance of authority seems in favour of the principle that section 68 incorporated by itself in a special Act would give a right to com-

L. Cl. Act,
1845, gives
right to com-
pensation for
injury to
lands.

(*o*) As to the procedure for assessing compensation under this section, see *post*, p. 183.

(*p*) *Fletcher v. Birkenhead Corporation*, [1907] 1 K. B. 205, at p. 216, *per* Cozens-Hardy, L. J.

(*q*) Cf. *Harpur v. Swansea Corporation*, [1913] A. C. 597, at p. 606, *per* Lord Shaw.

(*r*) *Post*, pp. 172—221.

(*s*) *R. v. Vestry of St. Luke's, Chelsea* (1871), L. R. 6 Q. B. 572, 576; 7 Q. B. 148, 152; 41 L. J. Q. B. 81; *Ferrar v. Commissioners of Sewers* (1869), L. R. 4 Ex. 1, 227; 38 L. J. Ex. 102; cf. *Caledonian Rail. Co. v. Walker's Trustees* (1882), 7 App. Cas. 259; *Harpur v. Swansea Corporation*, [1913] A. C. 597, 607.

compensation for injury done, and that no further substantive provision would be required (*t*).

1. Where no Lands are taken.

The words
"injuriously
affected" only include
losses of a
certain kind.

Compensation, where no lands of the same owner are purchased or taken, is not given by the Lands Clauses Consolidation Act, 1845, or other similar Acts, for all the loss or damage which promoters inflict upon an owner. When no land has been taken, the words "injuriously affected," or words of similar import, are limited to loss or damage under the following heads:—

1. The damage or loss must result from an act made lawful by the statutory powers of the promoters.
2. The damage or loss must be such as would have been actionable but for statutory powers.
3. The damage or loss must be an injury to lands, and not a personal injury, or an injury to trade.
4. The damage or loss must be occasioned by the construction of the authorized works, and not by their user.

These principles apply equally to cases under the Lands Clauses Act, 1845, s. 68, the Railways Clauses Act, 1845, ss. 6, 16 (*u*), the Public Health Act, 1875, s. 308 (*x*), and the Waterworks Clauses Act, 1847, ss. 6, 12, save that in the case of this latter Act injurious affection covers damage or loss occasioned by the maintenance as well as by the construction of the authorized works (*y*).

For the sake of clearness each of these four heads is dealt with separately; but when it is desired to ascertain whether and how far lands have been injuriously affected, it is sufficient as a general principle to determine, when the decisions have been analysed,

General
principle.

(*t*) *Ferrar v. Commissioners of Sewers* (1869), L. R. 4 Ex. 1, 227; 38 L. J. Ex. 102; *R. v. Vestry of St. Luke's, Chelsea* (1871), L. R. 6 Q. B. 572; 7 Q. B. 148; 41 L. J. Q. B. 81; dictum of Willes, J., in *McCarthy v. Metropolitan Board of Works* (1872), L. R. 7 C. P. 508, at p. 516; 42 L. J. C. P. 81; *Broadbent v. Imperial Gaslight Co.* (1857), 26 L. J. Ch. 276 (C. A.); (1859), 7 H. L. C. 600; 29 L. J. Ch. 377 (H. L.); *Kirby v. Harrogate School Board*, [1896] 1 Ch. 437; 65 L. J. Ch. 376.

(*u*) *Ricket v. Metropolitan Rail. Co.* (1867), L. R. 2 H. L. 175; 36 L. J. Q. B. 205; *Hammersmith Rail. Co. v. Brand* (1869), L. R. 4 H. L. 171; 38 L. J. Q. B. 265; cf. *Holditch v. Canadian Northern Ontario Rail. Co.*, [1916] 1 A. C. 536.

(*x*) *Hall v. Bristol (Mayor, &c. of)* (1867), L. R. 2 C. P. 322; *Brierley Hill Local Board v. Pearsall* (1884), 9 App. Cas. 595; 54 L. J. Q. B. 25.

(*y*) *Fletcher v. Birkenhead Corporation*, [1907] 1 K. B. 205; *post*, p. 160.

whether and how far any right recognized by law as incident to the ownership of land has been infringed by the construction of works made lawful by statute. It is obvious that an infringement of such a right would have been actionable but for the statutory powers.

Where lands have been taken and compensation is sought for injury done to lands held therewith, the above limitations on the right to claim compensation have not the same application (z).

1. Statutory compensation is given only for acts authorized to be done in the exercise of statutory powers (a). If an act which the promoters are authorized by law to do is done in a proper manner, though the act so done works a special injury to a particular individual, the individual injured cannot maintain an action, and his only remedy is by compensation (b). If damage is caused by an act which, notwithstanding the statute containing or incorporating the compensation clause, is not made lawful, the remedy by action is not taken away, and is open to the person injured (c).

(1) Loss must be consequence of an act made lawful;

Statutory powers must be exercised reasonably; and when damage has been occasioned by an act done in excess of statutory powers or in a wanton or careless or unreasonable use of them, there is an injury for which the person injured can put in force the ordinary legal remedies (d). Where compensation has to be assessed for all damage resulting from the construction or main-

(z) *Vide infra*, p. 161.

(a) *Caledonian Rail. Co. v. Colt* (1860), 3 Macq. H. L. (Sc.) 833; *Turner v. Sheffield and Rotherham Rail. Co.* (1842), 10 M. & W. 425; *Broadbent v. Imperial Gaslight Co.* (1857), 26 L. J. Ch. 276; *President, &c. of Colac v. Summerfield*, [1893] A. C. 187; 62 L. J. P. C. 64.

(b) *East Fremantle Corporation v. Annois*, [1902] A. C. 213; 71 L. J. P. C. 39; *Ash v. Great Northern, Piccadilly and Brompton Rail. Co.* (1903), 19 Times L. R. 639.

(c) *Brine v. Great Western Rail. Co.* (1862), 31 L. J. Q. B. 101; *Clowes v. Staffordshire Potteries Waterworks Co.* (1872), L. R. 8 Ch. 125; 42 L. J. Ch. 107.

(d) *London, Brighton and South Coast Rail. Co. v. Truman* (1885), 11 App. Cas. 45, 61; 55 L. J. Ch. 354; *Lawrence v. Great Northern Rail. Co.* (1851), 20 L. J. Q. B. 293; *Clothier v. Webster* (1862), 31 L. J. C. P. 316; *Brine v. Great Western Rail. Co.* (1862), 31 L. J. Q. B. 101; *Biscoe v. Great Eastern Rail. Co.* (1873), L. R. 16 Eq. 636; *Southwark and Vauxhall Water Co. v. Wandsworth District Board of Works*, [1898] 2 Ch. 603; 67 L. J. Ch. 657; *Roberts v. Charing Cross, Euston and Hampstead Rail. Co.* (1903), 87 L. T. 732; but see *Martin v. London County Council* (1898-9), 79 L. T. 170; 80 L. T. 866.

tenance of works, negligence is not material so long as the act done is not in excess of statutory powers (*e*). If compensation has been given for an act in excess of statutory powers, this may be pleaded in an action to enforce payment of the amount, but it does not follow that defective or careless work comes within this principle so as to disentitle a claimant to compensation (*f*). If this defence is pleaded, it must be affirmatively proved (*g*). Where the exercise of statutory powers necessarily causes damage, no action will lie (*h*). A railway company having purchased land adjoining one of their stations, and used it as a yard or dock for cattle traffic, it was held that the purpose for which the land was acquired and had been used was expressly authorized by statute, and that, the company having taken proper care in the management of their traffic, the adjoining owners were not entitled to an injunction to restrain the company from continuing the nuisance occasioned by the use of the cattle yard (*i*).

A company acting under statutory powers is in the same position as a private individual acting within his own rights, and if the act is negligent there is liability by action (*k*).

(2) Loss must be such as but for statute would have been actionable.

2. An owner is not injuriously affected or entitled to compensation unless the damage is such that, but for the statutory authority, it would have been actionable (*l*). Since no action can be

(*e*) *President, &c. of Colac v. Summerfield*, [1893] A. C. 187; 62 L. J. P. C. 64.

(*f*) *Utley v. Todmorden Local Board* (1874), 44 L. J. O. P. 19; *Hornby v. Liverpool United Gas Co.* (1883), 47 J. P. 231.

(*g*) *St. James' and Pall Mall E. L. Co. v. R.* (1904), 73 L. J. K. B. 518.

(*h*) *R. v. Pease* (1832), 4 B. & Ad. 30; *Vaughan v. Taff Vale Rail. Co.* (1860), 29 L. J. Ex. 247; *Hammersmith, &c. Rail. Co. v. Brand* (1869), L. R. 4 H. L. 171; 38 L. J. Q. B. 265; *Cowper Essex v. Local Board of Acton* (1889), 14 App. Cas. 153; 58 L. J. Q. B. 594.

(*i*) *London, Brighton and South Coast Rail. Co. v. Truman* (1885), 11 App. Cas. 45; 55 L. J. Ch. 354; *Att.-Gen. v. Metropolitan Rail. Co.*, [1894] 1 Q. B. 384.

(*k*) *Roberts v. Charing Cross, Euston and Hampstead Rail. Co.* (1903), 87 L. T. 732.

(*l*) *Glover v. North Staffordshire Rail. Co.* (1851), 20 L. J. Q. B. 376; *Caledonian Rail. Co. v. Ogilvy* (1856), 2 Macq. H. L. (Sc.) 229; *Re Penny and South Eastern Rail. Co.* (1857), 26 L. J. Q. B. 225; *Ricket v. Metropolitan Rail. Co.* (1867), L. R. 2 H. L. 175; 36 L. J. Q. B. 205; *Metropolitan Board of Works v. McCarthy* (1874), L. R. 7 H. L. 243; 43 L. J. C. P. 385; *Caledonian Rail. Co. v. Walker's Trustees* (1882), 7 App. Cas. 259; *Fleming v. Newport Rail. Co.* (1883), 8 App. Cas. 265; *Mayor, &c. of Birkenhead v. London and North Western Rail. Co.* (1885), 15 Q. B. D. 572; 55 L. J. Q. B. 48.

brought where damage has resulted from the authorized use without negligence of statutory powers, the right to compensation is the substituted remedy which the legislature has provided (*m*). Where a local authority had a general implied right of access to sewers, and such access had not been prevented, but only rendered less easy and convenient, it was held that there would have been no right of action by the local authority, supposing the company had not been protected by the powers of their Act, and that, consequently, no claim to compensation could be sustained (*n*).

The limitations comprised under heads (3) and (4) show that not every kind of damage which, but for statutory powers, would have been actionable, gives a claim to compensation (*o*). If the damage complained of is a personal injury (*p*), or an injury to trade (*q*), or caused by the user and not by the construction of the authorized works (*r*), the mere fact, that but for the statute it would have been actionable, is not in itself sufficient to found a claim for compensation. The user being made lawful by statute, no cause of action arises with respect to it, although, but for the statute, it might be actionable or an indictable nuisance (*s*). This principle does not apply where it is specially provided that the statutory powers shall not exonerate promoters from any indictment, action or proceeding

But compensation not given for all actionable damage.

(*m*) *R. v. Pease* (1832), 4 B. & Ad. 30; *Vaughan v. Taff Vale Rail. Co.* (1860), 29 L. J. Ex. 247; *London, Brighton and South Coast Rail. Co. v. Truman* (1885), 11 App. Cas. 45; 55 L. J. Ch. 354.

(*n*) *Mayor, &c. of Birkenhead v. London and North Western Rail. Co.* (1885), 15 Q. B. D. 572, at p. 578; 55 L. J. Q. B. 48; cf. *Thurrock Grays and Tilbury Joint Sewerage Board v. Goldsmith* (1914), 79 J. P. 17.

(*o*) *Caledonian Rail. Co. v. Ogilvy* (1856), 2 Macq. H. L. (Sc.) 229, 235; *R. v. Metropolitan Board of Works* (1869), L. R. 4 Q. B. 358; 38 L. J. Q. B. 201.

(*p*) *Caledonian Rail. Co. v. Ogilvy* (1856), 2 Macq. H. L. (Sc.) 229; *Metropolitan Board of Works v. McCarthy* (1874), L. R. 7 H. L. 243; 43 L. J. C. P. 385.

(*q*) *Ricket v. Metropolitan Rail. Co.* (1867), L. R. 2 H. L. 175; 36 L. J. Q. B. 205.

(*r*) *Hammersmith Rail. Co. v. Brand* (1869), L. R. 4 H. L. 171; 38 L. J. Q. B. 265.

(*s*) *R. v. Pease* (1832), 4 B. & Ad. 30; *Vaughan v. Taff Vale Rail. Co.* (1860), 29 L. J. Ex. 247; approved in *Hammersmith Rail. Co. v. Brand* (1869), L. R. 4 H. L. 171; 38 L. J. Q. B. 265; cf. *London, Brighton and South Coast Rail. Co. v. Truman* (1885), 11 App. Cas. 45; 53 L. J. Ch. 354; *Cowper Essex v. Acton L. B.* (1889), 14 App. Cas. 153; 58 L. J. Q. B. 594; *Harrison v. Southwark and Vauxhall Water Co.*, [1891] 2 Ch. 409; 60 L. J. Ch. 630.

for nuisance in the event of any nuisance being occasioned by them (*t*).

Application
of this
principle.

The application of this principle, or, in other words, the question whether the damage complained of in any particular case would have been actionable but for the statute, has given rise to a large number of decisions, which have established the following tests :—

(a) Structural
damage.

(a) When the subjacent or adjacent support, to which the owner of buildings is by law entitled, is interfered with, and structural damage is occasioned, such owner is subjected to a loss which, but for statutory powers, would have given him a right of action, and has a right to claim compensation (*u*).

(b) Interfer-
ence with
easement or
similar right.

(b) When an easement or similar right has been interfered with, the loss so occasioned would have been actionable but for statutory powers, and the owner has a claim to compensation. Interference with access to an ancient ferry attached to the claimant's land (*x*), obstruction of a private road (*y*), or of access through a hall which the claimants were entitled to make use of in connection with their property (*z*), or of ancient lights (*a*), or diminution of the flow of water, to which a riparian owner has a prescriptive right (*b*), are matters for which compensation can be claimed.

(*t*) *Jordeson v. Sutton, &c. Gas Co.*, [1899] 2 Ch. 217; 68 L. J. Ch. 457; *Colwell v. St. Pancras Borough Council*, [1904] 1 Ch. 707; 73 L. J. Ch. 275.

(*u*) *Metropolitan Board of Works v. McCarthy* (1874), L. R. 7 H. L. 243; 43 L. J. C. P. 385. All the cases admit this principle: cf. *Gillard v. Cheshire Lines Committee* (1883), 32 W. R. 943; *Jordeson v. Sutton, &c. Gas Co.*, [1899] 2 Ch. 217; 68 L. J. Ch. 457; *Fletcher v. Birkenhead Corporation*, [1907] 1 K. B. 205.

(*x*) *R. v. Great Northern Rail. Co., In re Cooling* (1849), 19 L. J. Q. B. 25.

(*y*) *Glover v. North Staffordshire Rail. Co.* (1851), 20 L. J. Q. B. 376; *Barnard v. Great Western Rail. Co.* (1902), 86 L. T. 798.

(*z*) *Ford v. Metropolitan, &c. Rail. Co.* (1886), 17 Q. B. D. 12; 55 L. J. Q. B. 296.

(*a*) *Eagle v. Charing Cross Rail. Co.* (1867), L. R. 2 C. P. 638; 36 L. J. C. P. 297; *Clark v. School Board for London* (1874), L. R. 9 Ch. 120; *Duke of Bedford v. Dawson* (1875), L. R. 20 Eq. 353; 44 L. J. Ch. 549; *French v. London, Tilbury and Southend Rail. Co.* (1886), 2 Times L. R. 395; *Wigram v. Fryer* (1887), 36 Ch. D. 87; 56 L. J. Ch. 1098; *In re London, Tilbury, &c. Rail. Co. and Gower's Walk Schools* (1889), 24 Q. B. D. 326; 59 L. J. Q. B. 162; *Emsley v. North Eastern Rail. Co.*, [1896] 1 Ch. 418; 65 L. J. Ch. 385; *Courage & Co. v. South Eastern Rail. Co.* (1902), 19 Times L. R. 61.

(*b*) *Mortimer v. South Wales Rail. Co.* (1859), 28 L. J. Q. B. 129; *Bush v. Trowbridge Waterworks Co.* (1875), L. R. 10 Ch. 459; 44 L. J. Ch. 235, 645; *Stone v. Mayor, &c. of Yeovil* (1876), 2 C. P. D. 99; 46 L. J. C. P. 137; *Page v. Kettering Waterworks Co.* (1892), 8 Times L. R. 228.

In all the above cases, where a legal right has been interfered with by exercise of the powers conferred upon the promoters, all the damage done to the owner as the consequence of that interference is the subject of compensation.

Where the promoters obstructed certain ancient lights, and also windows and portions of windows which did not coincide with any of the ancient lights, it was held that the claimants were entitled to compensation in respect of the whole of the windows so obstructed including the windows and portions of windows which did not coincide with any of the ancient lights (*c*).

Ancient
lights.

In estimating the amount of compensation for injuriously affecting ancient lights, the fact that by reason of outside and accidental circumstances the saleable value of the premises is not diminished is not a fact which can be taken into account (*d*).

It has been held (*e*), under a private Act (*f*), that a tenant to the local authority could not be restrained from obstructing ancient lights by building artizan's dwellings on one of the plots of land devoted to that purpose, but that the adjoining owner has his right to claim compensation from the local authority under section 68 of the Lands Clauses Act, 1845.

Where a sewer is vested in a local authority, it would probably be held that the sewer gives the authority an interest sufficient to found a claim for compensation (*g*).

Sewers.

If promoters construct works, and their character is such that they could have been constructed by the grantor of a right of sporting consistently with the terms of his grant, the grantee is not subjected to a loss which, but for statutory powers, would have been actionable, and cannot maintain a claim to compensation (*h*).

Sporting
rights.

Interference with a flow of water, to which there is no prescriptive right, is not a loss which, but for statutory powers, would

Water
rights.

(*e*) *In re London, Tilbury, &c. Rail. Co. and Gower's Walk Schools* (1889), 24 Q. B. D. 326; 59 L. J. Q. B. 162.

(*d*) *Eagle v. Charing Cross Rail. Co.* (1867), L. R. 2 C. P. 638; 36 L. J. C. P. 297; cf. *Senior v. Metropolitan Rail. Co.* (1863), 32 L. J. Ex. 225.

(*e*) *Wigram v. Fryer* (1887), 36 Ch. D. 87; 56 L. J. Ch. 1098.

(*f*) The Metropolitan Street Improvements Act, 1877 (40 & 41 Vict. c. ccxxxv.), as amended by the Amending Act of 1882 (45 & 46 Vict. c. ccxxii.).

(*g*) *Mayor, &c. of Birkenhead v. London and North Western Rail. Co.* (1885), 15 Q. B. D. 572, at p. 578; 55 L. J. Q. B. 48; cf. *Metropolitan Board of Works v. Metropolitan Rail. Co.* (1868-9), L. R. 3 C. P. 612; 4 C. P. 192; 32 L. J. C. P. 281.

(*h*) *Bird v. Great Eastern Rail. Co.* (1865), 34 L. J. C. P. 366; see the judgment of Willes, J.

have been actionable, and there is no claim for compensation (*i*). It makes no difference that the owner in diverting or appropriating percolating water within his own land is prompted by a motive improper or even malicious (*k*). There can be no prescriptive right to a flow of underground water in an undefined or unknown channel (*l*). Yet if such water is a common source which everybody has a right to appropriate, no one is justified in injuring this right of appropriation by contaminating the water (*m*). A claim for compensation may arise where there is an occasional flooding of lands caused by a proper execution of statutory powers (*n*).

Privacy.

Interference with the privacy of lands through their being overlooked from a railway embankment is not a damage to a private right which would, but for statutory powers, have given a right of action, and the owner of such lands is not entitled to compensation (*o*).

Subsoil of street.

Although the erection of an authorized post for tramway purposes in the soil beneath the surface of the street does not entitle the owner to a notice to treat, he would be entitled to claim compensation if he could prove that his property had been injuriously affected (*p*).

Access to private road.

An owner has no title to compensation, where the promoters have prevented him from ever having carriage access in a certain direction, to a road shown on the feuing plan, but which the superior was under no obligation to open. If there had been an obligation on the superior to open out the road shown on the feuing plan for the benefit of the owner, the owner would have had a legal right entitling him to the opening of the road as shown on the plan, and the claim to compensation could have been sustained (*q*).

(*i*) *R. v. Bristol Docks Co.* (1810), 12 East, 429.

(*k*) *Bradford Corporation v. Pickles*, [1895] A. C. 587; 64 L. J. Ch. 759.

(*l*) *Chasemore v. Richards* (1859), 7 H. L. C. 349; 29 L. J. Ex. 81; *New River Co. v. Johnson* (1860), 29 L. J. M. C. 93; *R. v. Metropolitan Board of Works* (1863), 32 L. J. Q. B. 105; *Bradford Corporation v. Ferrand*, [1902] 2 Ch. 655; 71 L. J. Ch. 859.

(*m*) *Ballard v. Tomlinson* (1885), 29 Ch. D. 115; 54 L. J. Ch. 454.

(*n*) *Ware v. Regent's Canal Co.* (1858), 28 L. J. Ch. 153.

(*o*) *Re Penny and South Eastern Rail. Co.* (1857), 26 L. J. Q. B. 225.

(*p*) *Escott v. Newport Corporation*, [1904] 2 K. B. 369.

(*q*) *Fleming v. Newport Rail. Co.* (1883), 8 App. Cas. 265; *Solway Rail. Co. v. Jackson* (1874), 1 Rettie (Sc.), 831.

(c) The right of access from private property to a public thoroughfare is a right recognized by law as incident to the ownership of land, and any interference with this right, causing damage, entitles an owner to claim compensation (*r*). If an owner has suffered no injury to his rights of ownership through the obstruction of a public highway, he would have had no right of action in respect of his interest in lands, even if there had been no statutory powers, and he cannot maintain a claim to compensation (*s*).

(c) Injury to rights of ownership through obstruction of a public right.

If the physical access from lands or premises to a public highway or a navigable river, on which the lands or premises immediately abut, is taken away or rendered less convenient, and the value of such lands or premises is depreciated thereby, the owner is subjected to an interference with his proprietary rights, and is entitled to compensation (*t*). There is no distinction between a tidal river and the sea, and where an owner has a right of access and this right of access is interfered with, he is entitled to compensation (*u*).

Obstruction of highway on which lands abut.

If through the obstruction or narrowing of a public highway or navigable river, the right of physical access incident to the ownership of lands or premises is taken away or made less convenient, and in consequence the value of such lands or premises is diminished, the owner is entitled to compensation, although his lands or premises do not immediately abut upon the public highway or navigable river where the alteration in question has been made (*x*).

On which they do not abut.

(*r*) *Lyon v. Fishmongers' Co.* (1876), 1 App. Cas. 662; 46 L. J. Ch. 68; *Caledonian Rail. Co. v. Walker's Trustees* (1882), 7 App. Cas. 259; cf. *Furness Rail. Co. v. Cumberland Building Society* (1884), 52 L. T. 144 (H. L.); *Wood v. Stourbridge, &c. Rail. Co.* (1864), 16 C. B. (N. S.) 222.

(*s*) *Caledonian Rail. Co. v. Ogilvy* (1856), 2 Macq. H. L. (Sc.) 229.

(*t*) *R. v. Eastern Counties Rail. Co.* (1841), 11 L. J. Q. B. 66, 178; *Macey v. Metropolitan Board of Works* (1864), 33 L. J. Ch. 377; *Beckett v. Midland Rail. Co.* (1867), L. R. 3 C. P. 82; 37 L. J. C. P. 11; *Buccleuch v. Metropolitan Board of Works* (1872), L. R. 5 H. L. 418; 41 L. J. Ex. 137; *Metropolitan Board of Works v. McCarthy* (1874), L. R. 7 H. L. 243; 43 L. J. C. P. 385; *Lyon v. Fishmongers' Co.* (1876), 1 App. Cas. 662; 46 L. J. Ch. 68; *North Shore Rail. Co. v. Pion* (1889), 14 App. Cas. 612, 620; *Re Arbitration between Great Eastern Rail. Co. and L. C. C.* (1908), 98 L. T. 116; *Lingké v. Christchurch Corporation*, [1912] 3 K. B. 595.

(*u*) *R. v. Rynd* (1863), 16 Ir. C. L. R. 29; *Att.-Gen. of Straits Settlements v. Wemyss* (1888), 13 App. Cas. 192; 57 L. J. P. C. 62.

(*x*) *Chamberlain v. West End of London, &c. Rail. Co.* (1863), 32 L. J. Q. B. 173; *Cameron v. Charing Cross Rail. Co.* (1865), 19 C. B. (N. S.) 764; *Beckett v. Midland Rail. Co.* (1867), L. R. 3 C. P. 82; *per Willes, J.*, at p. 98; 37 L. J. C. P. 11; *Metropolitan Board of Works v. McCarthy* (1874), L. R. 7

Obstruction to public does not entitle owner to compensation.

If the obstruction of a public highway or navigable river does not interfere with a legal right attached to the lands or premises, but merely causes an inconvenience diverting the public and occasioning a loss of custom in trade, the damage thereby occasioned to the owner is not an injury to lands or premises, and does not entitle him to claim compensation (*y*). Even if works carried out under statutory powers are unnecessarily or unreasonably delayed, the person injured by the diversion of traffic or custom has no right of action unless he can prove that the obstruction complained of affects him in a direct and substantial manner so as to cause a special injury different from that which is common to the rest of the public (*z*).

In considering the cases under this head, it is essential to note clearly the form in which the claim is made, since it does not follow that, because the claim as made is not maintainable, no valid claim framed on a proper basis could have been sustained. Thus compensation can be claimed when a diversion of traffic depreciates the market value of premises for all purposes, although evidence of actual loss of trade or of the decreased number of years' purchase should not be admitted (*a*).

(d) Restrictive covenants.

(d) Where land is purchased subject to a restrictive covenant in the hands of a vendor, the covenantee cannot maintain an action against the purchaser for breach of the covenant, and his only remedy is compensation (*b*). The same principle applies in the case of a covenant for quiet enjoyment (*c*).

H. L. 243; 43 L. J. C. P. 385 (approving *Chamberlain's Case*); *Caledonian Rail. Co. v. Walker's Trustees* (1882), 7 App. Cas. 259; *Wadham v. North Eastern Rail. Co.* (1884), 14 Q. B. D. 747; 16 Q. B. D. 227; 54 L. J. Q. B. 344; 55 L. J. Q. B. 272; *Furness Rail. Co. v. Cumberland Co-operative Building Society* (1884), 52 L. T. 144 (H. L.); cf. *Iveson v. Moore* (1697), 1 Ld. Raym. 486; *Baker v. Moore* (1696), 1 Ld. Raym. 491, n.

(*y*) *R. v. London Dock Co.* (1836), 5 A. & E. 163; *Ricket v. Metropolitan Rail. Co.* (1867), L. R. 2 H. L. 175; 36 L. J. Q. B. 205; *R. v. Metropolitan Board of Works* (1869), L. R. 4 Q. B. 358; 38 L. J. Q. B. 201.

(*z*) *Martin v. London County Council* (1898-9), 79 L. T. 170; 80 L. T. 866.

(*a*) *Metropolitan Board of Works v. Howard* (1889), 5 Times L. R. 732 (H. L.); cf. *Martin v. London County Council* (1898-9), 79 L. T. 170; 80 L. T. 866.

(*b*) *Kirby v. Harrogate School Board*, [1896] 1 Ch. 437; 65 L. J. Ch. 376; *Long Eaton Recreation Grounds Co. v. Midland Rail. Co.*, [1902] 2 K. B. 574; 71 L. J. K. B. 837.

(*c*) *Manchester, Sheffield and Lincolnshire Rail. Co. v. Anderson*, [1898] 2 Ch. 394; 67 L. J. Ch. 568.

The fact that damage which would have been actionable but for the statutory powers is of a permanent or temporary character does not affect the right of an owner to claim compensation, and is material only in considering the amount to be assessed. The dictum of Lord Chelmsford in *Ricket v. Metropolitan Rail. Co.* (d), that there was no claim for compensation in that the damage arose from the temporary operations of the company and not from their permanent works, was unnecessary for the purposes of the decision, and has not been followed in subsequent cases (e).

Permanency
of damage
not material.

In considering the effect of *Ricket's case* (f), the special points upon which the decision turned must be carefully borne in mind, and the decision must not be extended. In that case the jury had found that there was no damage to the structure of the house or premises, but that the plaintiff had sustained damage in respect of the interruption of his business. The question to be decided was, whether the loss of customers by the plaintiff in his trade under the above circumstances was such damage as entitled him to claim compensation from the company. Lord Chelmsford (g) states that "the damage which is the foundation of the claim to compensation is too remote to be the subject of action." This finding would have been sufficient in law to dispose of the case. If on the facts a jury or arbitrator had found that the damage complained of had affected the value of the premises apart from any question of injury to trade, a claim to compensation could have been maintained. Lord Chelmsford himself, in the subsequent case of *Metropolitan Board of Works v. McCarthy* (h), accepted as a guide for the decision of compensation cases a definition relied on by Mr. Thesiger, Q.C., in his argument, and which is thus stated by Lord Cairns: "Where, by the construction of works, there is a physical interference with any right, public or private, which the owners or occupiers of property are by law entitled to make use of, in connection with such property, and which right gives an additional market value to such property, apart from the uses to which any particular owner or occupier might put it, there is a title to compensation, if by

(d) (1867), L. R. 2 H. L. 175; 36 L. J. Q. B. 205.

(e) Cf. *Metropolitan Board of Works v. McCarthy* (1874), L. R. 7 H. L. 243; 43 L. J. C. P. 385; *Ford v. Metropolitan Rail. Co.* (1886), 17 Q. B. D. 12; 55 L. J. Q. B. 296; *Lingké v. Christchurch Corporation*, [1912] 3 K. B. 595.

(f) (1867), L. R. 2 H. L. 175; 36 L. J. Q. B. 205.

(g) At p. 188.

(h) (1874), L. R. 7 H. L. 243; 43 L. J. C. P. 385.

reason of such interference the property as a property is lessened in value." This definition does not require that damage, in order to give a claim for compensation, should be permanent (*i*).

In *Herring v. Metropolitan Board of Works* (*k*) it was decided that the plaintiffs had not suffered an injury which, apart from statutory powers, would have given a right of action, and the judgment is not based on the fact that the hoarding complained of was only temporary.

(3) The loss must be an injury to lands.

3. An owner is only entitled to compensation for loss caused by interference with an interest in lands, and not for damage to his trade or business, or for damage resulting in personal loss or inconvenience (*l*). Hence in considering the effect of the decided cases it is necessary to distinguish those in which the claim is founded on injury to an interest in land from those in which the claim is merely for damage to trade or business. In the latter case no compensation can be claimed. In the former it should be assessed by considering how far a property, in reference to its then state and condition, but independently of the profits of any particular trade carried on, would be worth less to sell or let as a property, in consequence of the damage for which compensation is claimed (*m*). The goodwill of a business may give, in reference to its particular use, a special value to property injuriously affected: but goodwill is not a right recognized by law as incident to the ownership of land, and loss of goodwill is a trade loss and not the subject of compensation; the amount of such loss must therefore not be included in the assessment where no land of the claimant has been taken (*n*).

(*i*) Cf. judgment of Willes, J., in *Beckett v. Midland Rail. Co.* (1867), L. R. 3 C. P. 82; 37 L. J. C. P. 11; *Lingké v. Christchurch Corporation*, [1912] 3 K. B. 595, in which *Herring's case* (*supra*) is discussed.

(*k*) (1865), 19 C. B. N. S. 510; 34 L. J. M. C. 224. See the judgments in *Lingké's case* (*supra*).

(*l*) *Ricket v. Metropolitan Rail. Co.* (1867), L. R. 2 H. L. 175; 36 L. J. Q. B. 205; *Caledonian Rail. Co. v. Ogilvy* (1856), 2 Macq. H. L. (Sc.) 229; *Re Penny and South Eastern Rail. Co.* (1857), 26 L. J. Q. B. 225; *R. v. Faughan* (1869), L. R. 4 Q. B. 190; *Bigg v. London Corporation* (1873), L. R. 15 Eq. 376; *Caledonian Rail. Co. v. Walker's Trustees* (1882), 7 App. Cas. 259; *Metropolitan Board of Works v. Howard* (1889), 5 Times L. R. 732; cf. *Lord Mayor of Dublin v. Dowling* (1880), 6 L. R. Ir. 502; *Lingké v. Christchurch Corporation*, [1912] 3 K. B. 595.

(*m*) Cf. *Wadham v. North Eastern Rail. Co.* (1884), 14 Q. B. D. 747; 16 Q. B. D. 227; 54 L. J. Q. B. 344; 55 L. J. Q. B. 272; *Metropolitan Board of Works v. Howard* (1889), 5 Times L. R. 732.

(*n*) *R. v. London Docks Co.* (1836), 5 A. & E. 163; *Cameron v. Charing*

The principle is fully explained by Willes, J., in his judgment in *Beckett v. Midland Rail. Co.* (o).

"The damage complained of must be one which is sustained in respect of the ownership of the property,—in respect of the property itself, and not in respect of any particular use to which it may from time to time be put; in other words, it must, as I read that judgment, be a damage which would be sustained by any person who was the owner, to whatever use he might think proper to put the property. Now that of course is to be taken with the limitation that a person who owns a house is not to be expected to pull it down in order to use the land for agricultural purposes. That would be pushing the judgment in *Ricket v. Metropolitan Rail. Co.* to an absurd extent. The property is to be taken *in statu quo*, and to be considered with reference to the use to which any owner might put it, in its then condition, that is, as a house" (p).

4. Subject to what has been above stated (q) an owner is not entitled to compensation for loss arising from the user of authorized works, but only for loss caused by their construction. The principle is, that promoters are not bound to pay compensation for damage necessarily resulting from the use of their works for the purposes authorized by the legislature (r). The damage complained of in *Brand's case* (r), viz., actual structural damage to a house from vibration caused by running trains, would have entitled the owner to compensation, if the trains causing such vibration had been run for the purpose of the construction of the railway works, and not for the carriage of traffic after the line had been opened.

(4) Loss must arise from construction and not from user of works.

Cross Rail. Co. (1865), 19 C. B. N. S. 764; *Ricket v. Metropolitan Rail. Co.* (1867), L. R. 2 H. L. 175; 36 L. J. Q. B. 205; *Beckett v. Midland Rail. Co.* (1867), L. R. 3 C. P. 82; 37 L. J. C. P. 11; *R. v. Metropolitan Board of Works* (1869), L. R. 4 Q. B. 358; 38 L. J. Q. B. 201; *Metropolitan Board of Works v. McCarthy* (1874), L. R. 7 H. L. 243; 43 L. J. C. P. 385.

(o) (1867), L. R. 3 C. P. 82; 37 L. J. C. P. 11.

(p) Cf. *Wadham v. North Eastern Rail. Co.* (1884), 14 Q. B. D. 747; 16 Q. B. D. 227; 54 L. J. Q. B. 344; 55 L. J. Q. B. 272; *Metropolitan Board of Works v. Howard* (1889), 5 Times L. R. 732.

(q) *Ante*, p. 148.

(r) *R. v. Pease* (1830), 4 B. & Ad. 30; *Vaughan v. Taff Vale Rail. Co.* (1860), 29 L. J. Ex. 247; *Hammersmith Rail. Co. v. Brand* (1869), L. R. 4 H. L. 171; 38 L. J. Q. B. 265; *City of Glasgow Union Rail. Co. v. Hunter* (1870), L. R. 2 H. L. (Sc.) 78 (diss. Lord Westbury); *London, Brighton and South Coast Rail. Co. v. Truman* (1885), 11 App. Cas. 45; 55 L. J. Ch. 354; *Att.-Gen. v. Metropolitan Rail. Co.*, [1894] 1 Q. B. 384; *Canadian Pacific Rail. Co. v. Roy*, [1902] A. C. 220; 71 L. J. P. C. 51; *Holditch v. Canadian Northern Ontario Railway*, [1916] 1 A. C. 536.

Although section 68 of the Lands Clauses Act gives compensation for loss arising from the construction of works, this does not prevent an action being brought in a case where the work has been carried on at night in an unreasonable manner so as to render the plaintiff's house uninhabitable (s).

Loss to ferry
is caused by
user and not
by construc-
tion.

In two cases the question has been raised, whether the diversion of traffic from a ferry by a railway bridge and footbridge for passengers is a loss caused to the owner by the construction, or by the user of works. In *R. v. Cambrian Rail. Co.* (t), the Court of Queen's Bench decided that the loss in question was proximately caused by the construction, and not by the user of railway works. This decision was overruled in *Hopkins v. Great Northern Rail. Co.* (u), and Mellish, L. J., says in his judgment, "It seems to us that the construction of the railway, as distinguished from the user of the railway after it was constructed, was not the proximate cause of the damage suffered by the owner of the ferry, for this simple reason, that if the railway and footbridge had only been constructed and never opened to the public or used, it is plain the owner of the ferry would have suffered no damage whatever." In this latter case judgment was given against the claimant for compensation on the further ground, that an action could not have been maintained for disturbance of the ferry in respect of the traffic either by the railway or the footbridge, even if they had been erected without statutory authority.

Waterworks
Clauses Act,
1847.

Under the Waterworks Clauses Act, 1847, in the case of *Fletcher v. Birkenhead Corporation* (x), the Corporation had sunk a well on land acquired, but not from the applicant, and had pumped water from the well with a result that a large quantity of wet running silt had been abstracted from under the applicant's house, thereby causing damage due to subsidence. It was held that the applicant was entitled to compensation under sections 6 and 12 of the Waterworks Clauses Act, 1847 (y), for the damage which had been caused by the pumping after the completion of the structural works.

(s) *Coats v. Clarence Rail. Co.* (1830), 1 Russ. & M. 181; 8 L. J. (O. S.) Ch. 72; *Roberts v. Charing Cross, Euston and Hampstead Rail. Co.* (1903), 87 L. T. 732.

(t) (1871), L. R. 6 Q. B. 422; 40 L. J. Q. B. 169.

(u) (1877), 2 Q. B. D. 224; 46 L. J. Q. B. 265.

(x) [1907] 1 K. B. 205.

(y) *Ante*, p. 145.

In *Harpur v. Swansea Corporation* (z), the undertakers had broken up a public road to lay a pipe therein, and then restored the road to its former condition. Eight months later a portion of the road slipped and was repaired by the County Council (the road authority), who made a claim against the undertakers. The House of Lords held that the claim fell within section 6 and not section 28 of the Waterworks Clauses Act, 1847, Lords Loreburn and Parker because that section applied whether the claim fell within section 28 or not, Lord Shaw because the findings of fact did not bring the claim within section 28.

In 1902 a clause was inserted in the Underground Railway Acts in London giving compensation under certain conditions for injury caused by reason of the working of the railways although no property of the claimant had been taken; the general principle would not in any case apply where a special compensation provision is inserted in the private Act. Provisions in special Acts.

2. Where Lands injured are held with Lands taken.

When lands have been, or are required to be, purchased or taken, and compensation is claimed for injury to lands held therewith, the owner (a) is entitled to compensation for damage to be sustained by him by reason of the severing of the lands taken from his other lands, or otherwise injuriously affecting such lands by the exercise of the powers of the Lands Clauses Act, 1845, or the special Act or any Act incorporated therewith (b). Compensation for injury to lands held with lands taken.

When lands injured are held by the same owner, and for the same common object as lands taken, they are held therewith in accordance with the terms of the Lands Clauses Act, 1845, s. 49, although they are not held under the same title, and are not in physical contiguity (c). What are lands held with lands taken.

Where several pieces of land owned by the same person are, though not adjoining, so near together and so situated that the

(z) [1913] A. C. 597.

(a) This includes a mortgagee in possession: *R. v. Middlesex (Clerk of the Peace)*, [1914] 3 K. B. 259.

(b) Ss. 49, 63, L. Cl. Act, 1845; *Horton v. Colwyn Bay and Colwyn U. D. C.*, [1908] 1 K. B. 327.

(c) *Holt v. Gas Light and Coke Co.* (1872), L. R. 7 Q. B. 728; 41 L. J. Q. B. 351; approved in *Cowper Essex v. Acton L. B.* (1889), 14 App. Cas. 153; 58 L. J. Q. B. 594.

possession and control of each gives an enhanced value to all of them, they are lands held together within the meaning of the Act, so that if one piece is compulsorily taken and converted to uses which depreciate the value of the rest, the owner has a right to compensation for the depreciation (*d*). Lands injured are not held with lands taken, if they are not otherwise connected than by being held under the same title (*e*), as in the case of *Holditch v. Canadian Northern Ontario Railway* (*f*), where there was one owner of many holdings, but there was not one holding, nor did his unity of ownership "conduce to the advantage or protection" of them all as one holding.

Compensation for severance.

Where the amount of compensation is assessed by two justices or a magistrate under section 121, and a claim is made for severance, the assessing tribunal has only jurisdiction to assess compensation for the value of the interest in the land taken, and for damage sustained by severing or otherwise injuriously affecting lands held therewith during the period of time for which the lands taken are held (*g*).

Compensation only for acts authorized by statute.

Only the first of the principles given above (*h*)—that compensation is given only for acts authorized to be done in the exercise of statutory powers—applies in the assessment of injury to lands held with lands taken. If, notwithstanding the statute, an act is still wrongful, the remedy of the person injured is by action, and not by proceedings for the assessment of compensation (*i*).

When lands taken it is not material whether but for statute damage would be actionable.

The second principle—that an owner is not entitled to compensation, except for matters which, but for statutory powers, would have given a right to action—becomes inapplicable when compensation is claimed for injury to lands held with lands taken. The owner of lands taken has been in possession of property without which the proposed undertaking could not have been accomplished, and there has been an interference with his rights, which, but for statutory powers, would have been actionable, and which gives a sufficient basis on which to found a claim for compensation in

(*d*) *Cowper Essex v. Acton L. B.* (1889), 14 App. Cas. 153, at p. 167, *per* Lord Watson.

(*e*) *City of Glasgow Union Rail. Co. v. Hunter* (1870), L. R. 2 H. L. (Sc.) 78; *Cowper Essex v. Acton L. B.* (1889), 14 App. Cas. 153.

(*f*) [1916] 1 A. C. 536, at p. 543 (Lord Sumner, quoting from *Cowper Essex v. Acton L. B.*, *supra*, *per* Lord Macnaghten, at p. 175).

(*g*) *Bexley Heath Rail. Co. v. North*, [1894] 2 Q. B. 579; 64 L. J. M. C. 17.

(*h*) *Ante*, p. 148.

(*i*) *Ante*, p. 149.

respect of consequential injury. On this point the case of *In re Stockport, &c. Rail. Co.* (*k*), is an authority with which no later decisions conflict. A railway company had taken some land the property of L., and proposed to make their railway so close to a cotton mill belonging to L., that, by reason of the proximity of the railway, and the danger of fire from the trains using the line, the building was less suitable for a cotton mill, could only be insured at an increased premium, and was rendered of less saleable value. Mr. Justice Crompton decided that L. was entitled to compensation, and said in his judgment, "Where the damage is occasioned by what is done upon other land which the company have purchased, and such damage would not have been actionable as against the original proprietor, as in the case of the sinking of a well and causing the abstraction of water by percolation, the company have a right to say, 'We have done what we had a right to do as proprietors, and do not require the protection of any Act of Parliament: we therefore have not injured you by virtue of the provisions of the Act; no cause of action has been taken away from you by the Act' (*l*). Where, however, the mischief is caused by what is done on the land taken, the party seeking compensation has a right to say, 'It is by the Act of Parliament, and the Act of Parliament only, that you have done the acts which have caused the damage; without the Act of Parliament, everything you have done, and are about to do, in the making and using the railway, would have been illegal and actionable, and is, therefore, matter for compensation according to the rule in question'" (*m*). In the case of *Cowper Essex v. Acton Local Board* (*n*) the principles laid down by Mr. Justice Crompton above were discussed and confirmed, and it has been held subsequently following these cases that no compensation is payable in respect of what is done on lands other than those taken from the claimant (*o*).

(*k*) (1864), 33 L. J. Q. B. 251.

(*l*) But see under Waterworks Clauses Act, 1847, *ante*, pp. 145, 160.

(*m*) Cf. *Buccleuch v. Metropolitan Board of Works* (1872), L. R. 5 H. L. 418; 41 L. J. Ex. 137.

(*n*) (1889), 14 App. Cas. 153; 58 L. J. Q. B. 594.

(*o*) *R. v. Mountford*, [1906] 2 K. B. 814; *Horton v. Colwyn Bay U. D. C.*, [1908] 1 K. B. 327; but see *Tayleur v. Dolter Electric Traction, Ltd.* (1907), 51 S. J. 702; and *In re London and North Western Rail. Co. and Reddaway* (1907), 23 Times L. R. 279.

Where lands taken compensation for all consequential damage.

The third principle—that compensation is only given to the extent that the value of property as property, in its then state and condition, and independently of its particular use, is depreciated—has only a modified application, even if it applies at all, when compensation is claimed for injury done to lands held with lands taken. Where the damage complained of has arisen from acts done on the lands taken, the measure of compensation for damage done to lands held therewith is the full consequential loss which the owner has sustained by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such other lands by the exercise of statutory powers.

This is the principle of *In re Stockport, &c. Rail. Co.* (o), confirmed in *Cowper Essex v. Acton Local Board* (p), and it is not dissented from even by the judges whose judgments and opinions were not followed in *Buccleuch v. Metropolitan Board of Works* (q). In that case Mr. Justice Blackburn was the only judge who gave his opinion in the House of Lords against the claim for compensation, adopting as a statement of his reasons his judgment given in the Exchequer Chamber, where he said (r), “And if I could think that the umpire really tried to estimate the compensation due to the duke for the severing of his causeway from his garden, and had prodigiously erred in assessing the amount, I am not prepared to say that the award could be questioned. But it would be doing him great injustice to suppose that he did so; I think it quite clear that he applied the principle of the *Stockport case*, as it has generally been understood, that a part of the premises being taken, it let in the claimant to have damages assessed for everything.”

In moving the judgment of the House of Lords, in *Buccleuch v. Metropolitan Board of Works* (q), Lord Chelmsford says (and Lord Colonsay adopts his reasoning), “It seems to be quite clear that the umpire was entitled to consider not only the damage which the plaintiff sustained by being deprived of the causeway, but also whether he was entitled to compensation in respect of damage otherwise sustained by reason of the embankment” (s). This

(o) (1864), 33 L. J. Q. B. 251.

(p) (1889), 14 App. Cas. 153; 58 L. J. Q. B. 594.

(q) (1872), L. R. 5 H. L. 418; 41 L. J. Ex. 137; and see the dictum as to this case in *Odium v. City of Vancouver* (1915), 85 L. J. P. C. 95; cf. *Lord Blantyre v. Babbie* (1888), 13 App. Cas. 631.

(r) (1870), L. R. 5 Ex. 221, at p. 243; 39 L. J. Ex. 130.

(s) This is inconsistent with the dictum of Lord Chelmsford in *City of*

passage must be taken in connection with the evidence of the umpire so far as it was held to be admissible: "I thought after all had been done, the house would be of less value to be occupied by a nobleman or gentleman than it had been before by the sum of 5,000*l.*" (*t*). The majority of the judges gave their judgment (*u*) or opinion (*x*) in favour of the same principle.

In *Ripley v. Great Northern Rail. Co.* (*y*), the promoters took land on which cotton mills would probably have been built. The owner had built a reservoir on adjacent lands from which the mills, if built, might have been supplied with water, and he was held entitled to compensation for loss of the prospective profits of the water supply to the projected mills.

In *In re London, Tilbury, &c. Rail. Co. and Gower's Walk Schools* (*z*), it was said in the Court of Appeal that when once a title to compensation was established the same measure of compensation should be adopted whether the lands alleged to be injuriously affected were or were not held with lands taken; and reference was made to section 16 of the Railways Clauses Act, 1845. It seems doubtful, however, whether this principle could be applied in all cases.

The fourth principle—that an owner is only entitled to compensation for damage done by the construction of the authorized works, and not for damage done by their user—is not applicable where the lands injured are held with lands taken. In this case, the measure of compensation is the depreciation in value of the premises damaged, assessed not only in reference to the loss occasioned by the construction of the authorized works, but also in reference to the loss which may probably result from the nature of their user. In other words, the use for which works have been constructed is an element in determining the amount of compensation payable to an owner, so far as such use has a tendency to depreciate the value of the lands which are affected. This is the

Where lands are taken compensation is given in respect of user of works.

Glasgow Union Rail. Co. v. Hunter (1870), L. R. 2 H. L. (Sc.) 78, at p. 82, disapproving the *Stockport case*. That dictum does not seem to express Lord Chelmsford's later opinion.

(*t*) At p. 422.

(*u*) Cf. judgment of Montague Smith, J., in Exch. Ch., L. R. 5 Ex. 221, at p. 250.

(*x*) Cf. opinion of Hannen, J., L. R. 5 H. L. 443.

(*y*) (1875), L. R. 10 Ch. 435.

(*z*) (1889), 24 Q. B. D. 326, 330, 331, *per* Lord Esher, M. R.; 59 L. J. Q. B. 162.

principle adopted in *In re Stockport, &c. Rail. Co.* (a), approved in *Buccleuch v. Metropolitan Board of Works* (b), and directly confirmed in *Cowper Essex v. Acton Local Board* (c).

In *Hammersmith Rail. Co. v. Brand* (d), which decided that compensation was not given for damage caused by the use of works, if no lands held therewith had been taken, the majority in the House of Lords consisted of Lord Chelmsford and Lord Colonsay, as against Lord Cairns, who dissented; and this case was held to govern the case of *City of Glasgow Union Rail. Co. v. Hunter* (e). In *Buccleuch v. Metropolitan Board of Works* (b), the House of Lords only adopted as admissible a certain portion of the umpire's evidence—"I thought after all had been done, the house would be of less value to be occupied by a nobleman or gentleman than it had been before by the sum of 5,000*l.*"—and did not accept as admissible the reasons which influenced the umpire's mind in coming to this decision, and which showed that he had considered damage which would be caused by the user of the embankment after it had been made. But in fact, damage resulting from the use of the embankment when made was included in the award, which was unanimously upheld by four judges in the Exchequer (f), but whose judgment was reversed by a majority of four to three in the Exchequer Chamber (g). Of the six judges whose opinions were asked by the House of Lords, five gave their opinion in favour of the validity of the award, and the House of Lords unanimously gave judgment in accordance with the opinions of the majority of the judges. Lord Chelmsford, who had moved the judgment of the majority (consisting of himself and Lord Colonsay) in *Brand's case* (h), expresses the following opinion in *Buccleuch's case* (i), which opinion is adopted by Lord Colonsay:—"In neither of these cases (*Brand's case* (h) and *Hunter's case*) (k) was any land taken by the railway company, connected with the lands alleged to have been so injured, and the

(a) (1864), 33 L. J. Q. B. 251.

(b) (1872), L. R. 5 H. L. 418; 41 L. J. Ex. 137.

(c) (1889), 14 App. Cas. 153; 58 L. J. Q. B. 594.

(d) (1869), L. R. 4 H. L. 171; 38 L. J. Q. B. 265.

(e) (1870), L. R. 2 H. L. (Sc.) 78.

(f) (1868), L. R. 3 Ex. 306; 37 L. J. Ex. 177.

(g) (1870), L. R. 5 Ex. 221; 39 L. J. Ex. 130.

(h) (1869), L. R. 4 H. L. 171; 38 L. J. Q. B. 265.

(i) At pp. 458, 460.

(k) (1870), L. R. 2 H. L. (Sc.) 78.

claim for compensation was for damage caused by the use, and not by the construction, of the railway. But if, in each of these cases, lands of the parties had been taken for the railway, I do not see why a claim for compensation in respect of injury to adjoining premises might not have been successfully made, on account of their probable depreciation by reason of vibration, or smoke, or noise occasioned by passing trains. . . . Now if the umpire was of opinion that Montague House was depreciated in value as a residence by reason of the proximity of the embankment, and of all the consequences of its use as a public highway, he was bound to give the plaintiff some compensation, and the amount proper to be awarded was entirely for him to determine."

It would be difficult to estimate the amount of damage which would probably be sustained by lands held with lands taken, unless the question of the purpose for which the lands had been or were required to be purchased were taken into consideration. This is well illustrated in a case in the House of Lords (*l*). It was held in this case that compensation must be fixed in reference to the purposes for which the lands of the same owner could be used under the statutory powers, and that it was not competent for the promoters to enter into an agreement which might restrict themselves and their successors in carrying out their statutory duties for the purpose of diminishing the probable amount of damage in respect of which compensation should be assessed (*m*). In the case of land taken by a school board the noise made by children outside a Board school may be taken into consideration in assessing the compensation payable for injury to the adjoining land of the same owner (*n*).

Purposes for which lands required taken into consideration.

The promoters are not entitled to set off against a claim of compensation for lands injuriously affected any benefit which the owner may derive from the construction of the undertaking (*o*).

Benefit of undertaking to owner not to be considered.

When no lands have been taken, section 68 of the Lands Clauses Act, 1845, gives compensation for injury done, and the owner should not bring his claim, until, through the construction of the works, the damage resulting from such injury is capable of assess-

Damage which can be foreseen must be assessed once for all.

(*l*) *Ayr Harbour Trustees v. Oswald* (1883), 8 App. Cas. 623; cf. *Lord Blantyre v. Babbie* (1888), 13 App. Cas. 631.

(*m*) Cf. *In re South Eastern Rail. Co. and Wiffin's Contract*, [1907] 2 Ch. 366.

(*n*) *R. v. Pearce, Ex parte London School Board* (1898), 78 L. T. 681.

(*o*) The "principle of betterment," vide Book II., c. 1, *post*, p. 315.

ment. The owner is then entitled to claim for all damage which is capable of being foreseen, and in respect of such damage the compensation is assessed once and for all, and no further claim in respect thereof can be made (*p*).

Future damage resulting from a past injury would be the subject of a claim for compensation under the Railways Clauses Act, 1845, but sections 6 and 16 of that Act include only injuries sustained by reason of the past exercise of the powers of the company, and not injuries to be sustained by the possible future exercise of such powers (*q*).

Subsequent
purchaser has
no claim to
compensation.

When lands are purchased and taken, sections 49 and 63 of the Lands Clauses Act, 1845, direct, that damage to be sustained by the owner in respect of other lands held therewith shall be assessed at the same time as the value of the lands purchased or taken. Future damage capable of being foreseen must be included in the award, and in respect thereof no subsequent claim can be made by the owner (*r*). If an owner who has received a notice to treat makes a claim for the value of the land taken, and for injury to his adjoining lands held therewith, he must make his claim once for all under both heads, and a subsequent purchaser of a portion of the adjoining lands has no right to claim compensation for injury actually incurred subsequent to his purchase (*s*).

Mines and
minerals.

In the case of mines and minerals where the provisions of the Railways Clauses Act, 1845, or similar provisions apply, compensation is not given for future apprehended injury, but the owner or lessee must bring forward his claim when his actual working of

(*p*) *Macey v. Metropolitan Board of Works* (1864), 33 L. J. Ch. 377; *Stone v. Mayor, &c. of Yeovil* (1876), 2 O. P. D. 99; 46 L. J. C. P. 137; *Caledonian Rail. Co. v. Lockhart* (1860), 3 Macq. H. L. (Sc.) 808; *In re Brogden and Llynvi Valley Rail. Co.* (1861), 30 L. J. C. P. 61; *Chamberlain v. West End of London, &c. Rail. Co.* (1863), 32 L. J. Q. B. 173; *Croft v. London and North Western Rail. Co.* (1863), 32 L. J. Q. B. 113; *R. v. Poulter* (1887), 20 Q. B. D. 132; 57 L. J. Q. B. 138.

(*q*) *R. v. Poulter* (1887), 20 Q. B. D. 132; 57 L. J. Q. B. 138.

(*r*) *Caledonian Rail. Co. v. Lockhart* (1860), 3 Macq. H. L. (Sc.) 808; *Croft v. London and North Western Rail. Co.* (1863), 32 L. J. Q. B. 113; *Todd v. Metropolitan District Rail. Co.* (1871), 24 L. T. 435. The case of *Lee v. Milner* (1837), 2 M. & W. 824, depends on the construction of a specially-worded clause. Cf. *Stone v. Mayor, &c. of Yeovil* (1876), 2 O. P. D. 99; 46 L. J. C. P. 137.

(*s*) *Mercer v. Liverpool, &c. Rail. Co.*, [1903] 1 K. B. 652; [1904] A. C. 461; 72 L. J. K. B. 128; 73 L. J. K. B. 960.

the minerals in accordance with the usual custom of the district is interfered with or restricted (t).

Damage that cannot be foreseen is clearly incapable of being included in an assessment of compensation, but there is some doubt whether the Lands Clauses Acts contain any provisions applicable to a second assessment of damage which, at the time of a prior assessment, could not have been foreseen. Unforeseen damage.

In *Ware v. Regent's Canal Co.* (u), Pollock, C. B., in delivering the judgment of the Court, and referring to the award says, "It seems to us the arbitrator could not, with propriety, have included any compensation in respect of that piece of land in his award. If any injury should hereafter arise, Mr. Ware would be entitled to compensation under the 68th section, which is expressly provided to meet such a case as this."

In *Lawrence v. Great Northern Rail. Co.* (x), the point decided was, that an action was maintainable against the company for negligence, notwithstanding their statutory powers. Patteson, J., however, in delivering judgment, said, "The proposition, that it (the award) was to be taken to embrace such (*i.e.* unforeseen) damages, is so startling that we should expect some provision to be pointed out to that effect, either in the general Acts relating to railways, or the special Act under which this railway was constructed, or the instrument of reference. We have examined all these, and are not only unable to find any such express provision, but any clause whatever which can fairly have any such interpretation put upon it. We are, therefore, clearly of opinion that the compensation must be taken in the restricted sense contended for by the plaintiff." A similar opinion was expressed by Romilly, M. R., in the case of *Lancashire and Yorkshire Rail. Co. v. Evans* (y). On the other hand, in *Croft v. London and North Western Rail. Co.* (z), Cockburn, C. J., expressed a strong opinion in the contrary sense: "The statute provides that compensation in respect of land taken and in respect of land injuriously affected shall at once and, as it appears to me, for all be settled; and

(t) *Holliday v. Mayor, &c. of Wckefield*, [1891] A. C. 81; 60 L. J. Q. B. 361; *Whitehouse v. Wolverhampton, &c. Rail. Co.* (1879), L. R. 5 Ex. 6; 39 L. J. Ex. 1; *Smith v. Great Western Rail. Co.* (1877), 3 App. Cas. 165; 47 L. J. Ch. 97. Cf. *ante*, p. 131.

(u) (1854), 23 L. J. Ex. 145.

(x) (1851), 16 Q. B. 643; 20 L. J. Q. B. 293.

(y) (1851), 15 Beav. 322.

(z) (1863), 32 L. J. Q. B. 113, at p. 119.

there is no provision whatever for any future damage presenting itself not contemplated by the parties at the time of compensation by the jury, or not entered upon before the jury. I think if the Act of Parliament had intended that the inquiry should be renewed from time to time, if that which at the time of the first inquiry might more or less be speculative should be afterwards realized, there certainly would have been some provision in some of the statutes." This opinion was not, however, necessary for the decision of the case, since it was held that the damages in question were such as could have been foreseen, and ought to have been taken into consideration by the arbitrator.

A second
assessment.

The balance of authority is in favour of a possible second assessment of compensation resulting from damage which, at the time of a prior assessment, could not have been foreseen. But so far there has been no decision directly in point. If the right to compensation is in all cases to be regarded as a substitute for the right of action, there seems no reason why unforeseen circumstances which would be sufficient to constitute a fresh cause of action (a) should not be sufficient to found a subsequent claim for compensation.

Compensation
under s. 68
is assignable.

It has been held that compensation for injuriously affecting under section 68 of the Lands Clauses Act, 1845, is a legal chose in action within the meaning of section 25 of the Judicature Act, 1873, and that consequently an assignee is entitled to sue in his own name (b).

Interest.

It is the province of an arbitrator to assess the amount as at the date when the right of the claimant first accrued, and it is not competent for him to award interest as between such date and the date of his award (c).

Injunction
where under-
takers refuse
compen-
sation.

If a person whose rights are injuriously affected by an undertaking authorized by statute, is refused compensation, he may be compelled to bring an action for an injunction. But even in that case the Court will probably not interfere with the construction of the works of the undertaking by an interlocutory injunction if the railway company act reasonably and are willing to put the matter

(a) *Darley Main Colliery Co. v. Mitchell* (1886), 11 App. Cas. 127; *Crumbie v. Wallsend Local Board*, [1891] 1 Q. B. 503; 60 L. J. Q. B. 392.

(b) *Dawson v. Great Northern and City Rail. Co.*, [1905] 1 K. B. 260; 74 L. J. K. B. 190.

(c) *Caledonian Rail. Co. v. Carmichael* (1870), L. R. 2 H. L. (Sc.) 56; *In re Richard and Great Western Rail. Co.*, [1905] 1 K. B. 68; 74 L. J. K. B. 9.

in train for the assessment of compensation. As Romilly, M. R., pointed out, in *Wood v. Charing Cross Rail. Co.* (*d*), the granting of an injunction which stops the works of a railway company is not merely a question between the plaintiff and the company. The public have an interest in the matter, and as a general rule it will be right to grant an injunction only where the company is acting in a high-handed and oppressive manner, or is guilty of some other misconduct (*e*).

(*d*) (1864), 33 Beav. 290.

(*e*) *Parkdale Corporation v. West* (1887), 12 App. Cas. 602, 616; 56 L. J. P. C. 66; cf. *Birmingham, &c. Land Co. v. London and North Western Rail. Co.* (1888), 40 Ch. D. 268. But *vide ante*, p. 45.

CHAPTER X.

SURVEYORS—JUSTICES.

Choice of
tribunal.

WHERE the owner has determined the amount to claim, and the promoters have determined the amount to offer, on the basis of the principles stated in Chapters VIII. and IX., and no agreement can be made, either party, desirous to proceed, has to consider what course is necessary to bring the question of compensation before one of the tribunals constituted under the Lands Clauses Acts.

Prohibition
or injunction
if tribunal
improperly
constituted.

Where the tribunal for assessing compensation has not been properly constituted, proceedings will be stayed in order to save the incurring of unnecessary expense. In the case of justices or sheriff, a writ of prohibition would be issued, and in the case of a surveyor or arbitrator, an injunction would be granted (*a*). But the Courts have uniformly kept within narrow limits any interference with proceedings for the assessment of compensation, and have refused to restrain a party from proceeding with an arbitration in a matter beyond the agreement to refer, although the proceeding may be futile and vexatious (*b*). The same principles apply although the arbitration proceedings have been commenced in the name of a person who has given no authority (*c*).

Where the tribunal is properly constituted, the owner is entitled to have the amount of compensation assessed under the Lands Clauses Acts, and questions of title or right to compensation stand

(*a*) *Pickering v. Cape Town Rail. Co.* (1865), L. R. 1 Eq. 84; *Malmesbury Rail. Co. v. Budd* (1876), 2 Ch. D. 113; 45 L. J. Ch. 271; *Beddow v. Beddow* (1878), 9 Ch. D. 89; 47 L. J. Ch. 570; *Kitts v. Moore*, [1895] 1 Q. B. 253; 64 L. J. Ch. 152.

(*b*) *North London Rail. Co. v. Great Northern Rail. Co.* (1883), 11 Q. B. D. 30; 52 L. J. Q. B. 380. Cf. *Sutton Harbour Improvement Commissioners v. Hitchens* (1851), 21 L. J. Ch. 73; *Farrar v. Cooper* (1890), 44 Ch. D. 323; 59 L. J. Ch. 506; *Wood v. Lillies* (1892), 61 L. J. Ch. 158.

(*c*) *London and Blackwall Rail. Co. v. Cross* (1886), 31 Ch. D. 354; 55 L. J. Ch. 313.

over for subsequent decision (*d*) ; the 25th section of the Judicature Act has not altered the previous practice (*e*).

(1.) Surveyors.

In all cases of valuations made by a surveyor or surveyors, the valuation should include not only the value of the lands taken, but also compensation for damage to be sustained by reason of the severing of lands taken from other lands of the same owner, or otherwise injuriously affecting such other lands (*f*).

What valuation by surveyor includes.

The amount of purchase-money or compensation payable to owners whose lands are required, or whose lands have been taken or injuriously affected, is settled by the valuation of a surveyor or of surveyors in the following cases :—

In what cases.

(1.) Where lands belonging to parties under disability or incapacity, or not having power to sell and convey, except under the special statutory powers, are purchased or taken, or injuriously affected (*g*), and the amount of compensation has not been determined by the verdict of a jury, or by arbitration, or by the valuation of an able practical surveyor appointed by two justices under section 58 of the Lands Clauses Act, 1845, such amount is not to be less than is determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters, and the other by the other party. If such surveyors do not agree, then the valuation is to be made by such third surveyor as any two justices shall, upon the application of either party, after notice to the other party, nominate for that purpose. The two surveyors, if they agree, and, if not, the third surveyor, are required to annex to the valuation a declaration of its correctness, and the amount of the valuation is to be deposited in the bank for the benefit of parties interested (*h*). In order that this section may be strictly complied with, the two surveyors should meet together and consider whether the price is a fair one ; and one surveyor should

(1) Where land is taken by agreement from parties under disability.

(*d*) *East and West India Dock Co. v. Gattke* (1851), 20 L. J. Ch. 217.

(*e*) *London and Blackwall Rail. Co. v. Cross* (1886), 31 Ch. D. 354; 55 L. J. Ch. 313; cf. *Kitts v. Moore*, [1895] 1 Q. B. 253; 64 L. J. Ch. 152.

(*f*) S. 63, L. Cl. Act, 1845; *Field v. Carnarvon and Llanberis Rail. Co.* (1867), L. R. 5 Eq. 190; 37 L. J. Ch. 176.

(*g*) *Stone v. Corporation of Yeovil* (1876), 2 C. P. D. 99; 46 L. J. C. P. 137.

(*h*) L. Cl. Act, 1845, s. 9; cf. Book II., p. 332.

not, without consultation, merely signify his assent to what the other may consider a fair price (*i*).

Mandamus ordering promoters to appoint a surveyor or to pay money into Court.

If the promoters, after having come to an agreement with an owner under disability, neglect or refuse to appoint a surveyor, it is submitted that the remedy is by application for a mandamus to compel them to appoint, and that the principle on which *Fotherby v. Metropolitan Rail. Co.* (*j*) was decided would apply. The promoters may be compelled by a mandamus to deposit in the bank the amount of the valuation assessed by two surveyors (*k*) under section 9 of the Lands Clauses Act, 1845.

S. 9 must be strictly complied with.

It is essential that the requirements of section 9 should be strictly complied with, and the absence of a declaration in writing annexed to the valuation, and subscribed by the surveyors, is fatal to a claim by the company for specific performance (*l*). In the case of *Baker v. Metropolitan Rail. Co.* (*m*), specific performance of a contract to purchase land was decreed, although the provisions of section 9 had not been complied with; but this case has not been followed, and is inconsistent with the principle laid down in *Wycombe Rail. Co. v. Donnington Hospital* (*n*).

Trustees for *femes covert* professing to convey lands under the provisions of the Lands Clauses Act, 1845, are not competent to contract under section 7, and the sale is invalid unless the provisions of section 9 have been strictly followed. This section is not followed if the trustees appoint one of themselves as surveyor. It seems to be immaterial whether the trustees have the price fixed by two surveyors and agree to sell at that price, or whether they first agree to sell for a certain price and then test such price by the valuation of two surveyors (*o*).

(2) In case of absence of, or inability to

(2.) The second case in which a valuation is made by a surveyor is where an owner is absent from the kingdom, or cannot after

(*i*) *Wycombe Rail. Co. v. Donnington Hospital* (1866), L. R. 1 Ch. 268, 274, per Turner, L. J.; cf. *Cotter v. Metropolitan Rail. Co.* (1864), 10 L. T. 777.

(*j*) (1867), L. R. 2 O. P. 188; 36 L. J. C. P. 88.

(*k*) *Stone v. Mayor, &c. of Yeovil* (1876), 1 C. P. D. 691; 2 C. P. D. 99; 45 L. J. C. P. 657; 46 L. J. C. P. 137.

(*l*) *Bridgend Gas Co. v. Earl of Dunraven* (1886), 31 Ch. D. 219; 55 L. J. Ch. 91; *Wycombe Rail. Co. v. Donnington Hospital* (1866), L. R. 1 Ch. 268.

(*m*) (1862), 32 L. J. Ch. 7.

(*n*) (1866), L. R. 1 Ch. 268.

(*o*) *Peters v. Lewes and East Grinstead Rail. Co.* (1881), 18 Ch. D. 429; 50 L. J. Ch. 839; cf. *In re Cotton's Trustees and London School Board* (1882), 19 Ch. D. 624; 51 L. J. Ch. 514.

diligent inquiry be found, or does not appear at the time appointed for an inquiry before a jury. In that case the purchase-money or compensation due to him is assessed by a surveyor nominated by two justices (*p*). When there is a doubt as to the ownership, there being two claimants to the same land, the valuation cannot be made by a surveyor under this section, but should be determined by a jury under section 23 (*q*). Upon the application of the promoters, the appointment of a surveyor is made in writing under the hand of two justices (*r*). It is not necessary to insert in the appointment a precise description of the lands to be valued, provided that they are known to the surveyor (*s*).

find owner, or his failure to appear.

Before entering upon the duty of making a valuation, a surveyor appointed under section 58 is required to make and subscribe a declaration of impartiality in the form prescribed in section 60 ; and it is a misdemeanour for a surveyor to make such declaration corruptly, or wilfully to act contrary thereto (*t*). The nomination and declaration must be attached to the valuation, and the promoters are to bear all expenses (*u*).

Declaration by surveyor.

When a surveyor has valued the interest in lands of an owner who cannot be found, or is absent from the kingdom, such owner, if he has not applied to the Court for the payment or investment of the amount deposited, is entitled to submit to arbitration the question of the sufficiency of the surveyor's valuation (*x*). If the arbitrators find the valuation to have been sufficient, costs, to be determined by them, are in their discretion (*y*) ; but if they find that it has not been sufficient, all costs are to be borne by the promoters (*y*), and the further sum awarded is to be paid or deposited within fourteen days, or, in default, the same can be enforced by attachment, or recovered, with costs, by action in the High Court (*z*).

Sufficiency of valuation may be submitted to arbitration.

When the amount of compensation due to an owner who is absent from the kingdom, or who cannot after diligent inquiry be

After deposit of valuation and execution

(*p*) L. Cl. Act, 1845, s. 58.

(*q*) *Ex parte London and South Western Rail. Co.* (1869), 38 L. J. Ch. 527.

(*r*) S. 59.

(*s*) *Poynder v. Great Northern Rail. Co.* (1847), 16 Sim. 3.

(*t*) S. 60.

(*u*) Ss. 61, 62.

(*x*) Ss. 64, 65.

(*y*) S. 67. By s. 1 of the Lands Clauses (Taxation of Costs) Act, 1895 (*vide post*, pp. 202, 440), either party can require the amount of such costs to be taxed by a taxing master.

(*z*) S. 66.

of deed poll,
lands vest in
promoters.

found, or who fails to appear on the inquiry before a jury, has been assessed by the valuation of a surveyor, the lands vest in the promoters, upon the deposit of the money in the bank and the execution by the promoters of a deed poll under sections 76, 77, of the Lands Clauses Act, 1845 (*a*).

(3) In case of
entry before
assessment.

(3.) The third case in which a valuation is made by a surveyor is where the promoters are desirous of entering upon and using lands, before the amount of compensation has been agreed upon or assessed. The promoters must deposit either the amount claimed, or such a sum as shall be fixed by a surveyor appointed by two justices, or, in the case of railways, by the Board of Trade (*b*). The amount to be deposited is entirely a question for the surveyor, and the Court will not interfere if it is fixed on a valuation made after full and proper consideration (*c*). It is otherwise if the surveyor has not inspected or considered the subject-matter of the valuation (*d*).

(4) Common-
able rights.

(4.) The fourth case in which a valuation is required to be made by a surveyor is where, after parties entitled to commonable rights have been duly summoned, no effectual meeting takes place, or where such meeting fails to appoint a committee (*e*). In these cases the amount of compensation is determined by a surveyor nominated by two justices (*f*), upon the application of the promoters, in the same manner as in the case of absent owners (*g*). Upon deposit of this amount in the bank, and execution by the promoters of a deed poll, the promoters become entitled to immediate possession of the commonable lands, freed and discharged from all commonable rights (*h*).

Impartial
person should
be appointed
surveyor.

In all cases in which the valuation of a surveyor is required under the Lands Clauses Act, 1845, it is improper that the surveyor appointed should have been in the employment of the promoters, although this may not be a sufficient ground for issuing an injunction (*i*), and a trustee who is also a contracting party cannot be

(*a*) *Vide post*, p. 269.

(*b*) *Vide ante*, p. 96; L. Cl. Act, 1845, s. 85; Railway Companies Act, 1867, s. 37.

(*c*) *River Roden Co. v. Barking U. D. C.* (1902), 18 Times L. R. 542, 608.

(*d*) *Cotter v. Metropolitan Rail. Co.* (1864), 10 L. T. 777.

(*e*) *Vide post*, p. 292.

(*f*) L. Cl. Act, 1845, ss. 102, 106.

(*g*) *Vide ante*, p. 174.

(*h*) S. 107.

(*i*) *Langham v. Great Northern Rail. Co.* (1847), 16 L. J. Ch. 437.

appointed as surveyor under the Act, nor can a tenant for life nominate himself (*j*).

All the expenses of and incident to a valuation by a surveyor, where the owner is absent from the kingdom or cannot be found, or does not appear at the time of the inquiry before a jury, are to be borne by the promoters (*k*). In other cases the expenses of valuation by surveyors are only thrown upon the promoters, when the money has been deposited in the bank, and costs become payable under section 80 of the Lands Clauses Act, 1845 (*l*). In any agreement to sell where the price is fixed by surveyors, the costs of fixing the price should be specially provided for.

Costs of a valuation by a surveyor.

(2.) Justices.

There are two cases in which the amount of purchase-money or compensation is settled by two justices.

Assessment of compensation by justices.

Section 22 of the Lands Clauses Act, 1845, enacts that where the compensation claimed for the value of lands, or for injury done to lands, does not exceed 50*l.*, the same shall be settled by two justices. The test of jurisdiction is the amount claimed by the owner (*m*); and, subject to the inability to recover costs, where the award or verdict is less than the sum offered, a claim could in every case be framed so as to make section 22 inapplicable.

Where amount claimed does not exceed 50*l.*

Section 121 enacts that where a person, having no greater interest than as a tenant for a year or from year to year, is required to give up possession of any lands before the expiration of his tenancy, the value of his interest in such lands, and the amount of the injury caused to such interest (*n*), if a portion only of lands so held is purchased or taken, shall be determined by two justices. It is not necessary to serve a notice to treat where a tenant is required to

Where possession of land is required from a tenant having no greater interest than for a year or from year to year.

(*j*) *Peters v. Lewes and East Grinstead Rail. Co.* (1881), 18 Ch. D. 429, 440; 50 L. J. Ch. 839.

(*k*) S. 62.

(*l*) *Ex parte Flower* (1866), L. R. 1 Ch. 599; 36 L. J. Ch. 193; cf. *Ex parte Morris* (1871), L. R. 12 Eq. 418; 40 L. J. Ch. 543; *Charlton v. Rolleston* (1884), 28 Ch. D. 237; 54 L. J. Ch. 233. As to costs under s. 80, *vide post*, p. 274.

(*m*) *Barber (or Baker) v. Nottingham and Grantham Rail. Co.* (1864), 33 L. J. C. P. 193; *Read v. Victoria Station, &c. Rail.* (1863), 9 Jur. N. S. 1061.

(*n*) Cf. *R. v. Great Northern Rail. Co.* (1876), 2 Q. B. D. 151, 156; 46 L. J. Q. B. 4.

give up possession under section 121 (*o*). The justices have no jurisdiction to inquire into the claimant's title ; but it is necessary for them to inquire whether the claimant has been required to give up possession of the land before the expiration of his term or interest, since the *quantum* of compensation will depend upon the period of time between the notice to give up possession and the length of his term or interest (*p*).

Possession
must be
actually
required.

Possession must be actually required ; and this is not done by the mere service of a notice to treat (*q*). If a tenant for a year or from year to year claims compensation exceeding 50*l.* for injury to his lands, and no portion of his lands has been taken, he is entitled to have the amount settled by a jury or by arbitration, and is not within the terms of section 121 (*r*).

What
tenancies
are included.

A joint occupation by two partners for business purposes, of distinct but adjoining premises separately leased to each partner, is not necessarily an interest less than that of a tenant from year to year, even when there is no formal stipulation as to the duration of the occupation (*s*).

At the time of requiring possession, the unexpired residue of a term under a lease was less than a year ; it was held, that the interest of the tenant was no greater than that of a tenant for a year or from year to year (*t*). The interest of a schoolmaster who was allowed a house, and was removable by the governors of the school at a three months' notice, was held to be included within the terms of section 121 (*u*). But agreements, which in equity are equivalent to a lease, entitle the tenant to claim as lessee in respect of the whole interest which he holds thereunder (*v*). Where no proceedings had been taken under a notice to treat, but subsequently thereto the lessor in accordance with the terms of his

(*o*) *Syers v. Metropolitan Board of Works* (1877), 36 L. T. 277, *per* Jessel, M. R., at p. 278. This dictum has since been followed.

(*p*) *Great Northern and City Rail. Co. v. Tillet*, [1902] 1 K. B. 874; 71 L. J. K. B. 525.

(*q*) *R. v. Stone* (1866), L. R. 1 Q. B. 529.

(*r*) *R. v. Middlesex Sheriff, In re Somers and Metropolitan Rail. Co.* (1862), 31 L. J. Q. B. 261.

(*s*) *R. v. East London Rail. Co., Ex parte Barnes* (1867), 17 L. T. 291.

(*t*) *R. v. Great Northern Rail. Co.* (1876), 2 Q. B. D. 151; 46 L. J. Q. B. 4.

(*u*) *R. v. Manchester, Sheffield and Lincolnshire Rail. Co.* (1854), 4 E. & B. 88.

(*v*) *In re King's Leasehold Estates* (1873), L. R. 16 Eq. 521; *Sweetman v. Metropolitan Rail. Co.* (1863), 1 H. & M. 543. Cf. *Cheshire Lines Committee v. Lewis* (1880), 50 L. J. Q. B. 121.

lease had given the lessee notice to terminate his tenancy at the expiration of three months, it was held that the giving of the notice to treat was immaterial, and that the amount of compensation could be determined under section 121 (*w*).

No claim can be made under section 121 if the occupier has received legal notice to quit, and his land is not required until after such notice has expired (*x*).

For the purpose of determining whether the compensation to a tenant should be assessed under section 121, the tenant's estate or interest must be regarded at the time when the promoters give notice of their intention to take the lands in question, and in a large number of cases this notice of intention to take is given in the notice to treat (*y*).

Nature of tenancy is fixed as at time of notice to treat.

In *Tyson v. Mayor of London* (*z*), the corporation gave, under the provisions of special Acts, six months' notice to the tenant of certain lands, of their intention to take the same. At the time of giving such notice, more than a year, but at the expiration of such notice, less than a year, of the tenancy remained. It was held that, for the purpose of determining whether the compensation to the tenant should be assessed by justices under section 121 of the Lands Clauses Act, 1845, the tenant's interest at the time of giving the notice, and not at its expiration, was to be considered, since the giving of such notice was an indication from the promoters of their intention to take the lands in question.

In *Cranwell v. Mayor of London* (*a*), a notice was given to a yearly tenant stating the intention of the promoters to take his premises and requiring possession in six months. This notice expired in May, 1866; but in fact nothing was done until January, 1867, when the promoters, having become assignees of the interest

(*w*) *R. v. Kennedy*, [1893] 1 Q. B. 533; 62 L. J. M. C. 168; *Bexley Heath Rail. Co. v. North*, [1894] 2 Q. B. 579; 64 L. J. M. C. 17.

(*x*) *Ex parte Merrett* (1859), 2 L. T. 471; *R. v. Vaughan* (1869), L. R. 4 Q. B. 190; 38 L. J. M. C. 49. Cf. *Ex parte Nadin* (1848), 17 L. J. Ch. 421; *Syers v. Metropolitan Board of Works* (1877), 36 L. T. 277; *R. v. Poulter* (1887), 20 Q. B. D. 132; 57 L. J. Q. B. 138.

(*y*) *Vide ante*, p. 81.

(*z*) (1871), L. R. 7 C. P. 18; 41 L. J. C. P. 6; cf. *Morgan v. Metropolitan Rail. Co.* (1868), L. R. 3 C. P. 553; 4 C. P. 97; 37 L. J. C. P. 265; 38 L. J. C. P. 87.

(*a*) (1870), L. R. 5 Ex. 284; 39 L. J. Ex. 193; cf. *R. v. London and Southampton Rail. Co.* (1839), 10 A. & E. 33, which is distinguished, on the ground that the tenant had accepted an equivalent for disturbance of possession or had acted so as to disentitle him to claim compensation.

of the landlord, took possession of the premises. No notice to quit had been given to the tenant, and there had been no assessment of compensation. It was held that the promoters were liable as trespassers, and that the tenant was entitled to compensation for the change in the character of his occupation, which the notice of intention to take had occasioned.

Or at time of actual entry.

In *R. v. Great Northern Rail. Co. (b)*, possession was taken by the promoters without any previous notice having been received by the tenant. The taking of possession had been acquiesced in by the tenant, who raised the question of the tribunal before which he was entitled to claim compensation. It was held that, since the tenant did not elect to treat the promoters as trespassers, the taking of possession was the act by which notice of an intention to take was first received by the tenant, and that the interest of the tenant must be estimated as at that time.

Severance.

Where the amount of compensation is assessed by two justices or a magistrate under section 121 and a claim is made for severance, the assessing tribunal has only jurisdiction to assess compensation for the value of the interest in the land taken and for damage sustained by severing or otherwise injuriously affecting lands held therewith during the period of time for which the lands taken are held (*c*).

Effect of non-production of lease on demand.

Section 122 enacts that, if a party claim compensation in respect of an unexpired term or interest under a lease or grant of lands, the promoters may require such party to produce such lease or grant, or the best evidence thereof in his power; and that, if this is not done within twenty-one days after a demand in writing, the party claiming compensation shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly. This applies to a written agreement void at law but equivalent in equity to a lease (*d*).

Qualification of two justices.

Section 3 of the Lands Clauses Act, 1845, defines the qualification of two justices before whom questions of compensation are determined. They must be justices of the county, city, cinque port, or place where the lands or a portion of the lands are situated, who have no interest in the matter, and who are assembled and acting together.

(*b*) (1876), 2 Q. B. D. 151; 46 L. J. Q. B. 4.

(*c*) *Bexley Heath Rail. Co. v. North*, [1894] 2 Q. B. 579; 64 L. J. M. C. 17.

(*d*) *Sweetman v. Metropolitan Rail. Co.* (1863), 1 H. & M. 543.

A single police magistrate, in the Metropolitan Police District (*e*), and any stipendiary magistrate for any county, borough or place (*f*), has the same power as two justices.

Any petty sessional Court (*g*) can act under the Lands Clauses Acts. It is no objection to an award by justices that more than two justices heard and determined the amount of compensation (*h*).

The provision, that justices shall not be interested in the matter brought before them, is no more than a declaration of existing law, and can be waived by consent of the parties (*i*). Interest.

Any direct pecuniary interest disqualifies a justice from acting as a judge (*k*). If a justice has any substantial interest, other than in a pecuniary sense, the High Court will consider whether the nature of such interest is likely to cause real bias. If there is a likelihood of real bias, a justice does wrong in acting, and the Court will prohibit him from adjudicating at all, or set aside any decision in which he has taken part; but the Court will not interfere where there is a mere possibility of bias, and no ground for doubting perfect good faith (*l*).

Section 24 of the Lands Clauses Act, 1845, defines the method of procedure by which a question of compensation is brought before two justices. Either the promoters or the owner can apply to a justice for a summons calling upon the other party to appear at a time and place named before two justices. Upon the appearance of both parties, or, in the absence of either of them, upon proof of due service of the summons, the two justices hear and determine the question of compensation. Costs are in the discretion of the justices, and they settle the amount. Method of
procedure
before
justices.

The proceedings of the justices, except the grant of the summons,

(*e*) Metropolitan Police Courts Act, 1839 (2 & 3 Vict. c. 71), s. 14.

(*f*) Stipendiary Magistrates Act, 1858 (21 & 22 Vict. c. 73), s. 1; Summary Jurisdiction Act, 1879 (42 & 43 Vict. c. 49), s. 20 (10).

(*g*) See Interpretation Act, 1889, s. 13, sub-s. 11.

(*h*) *R. v. Rochdale Improvement Commissioners* (1856), 2 Jur. N. S. 861, *per* Lord Campbell.

(*i*) *Wakefield L. B. v. West Riding, &c. Rail. Co.* (1865), L. R. 1 Q. B. 84; 35 L. J. M. C. 69.

(*k*) *Commissioners of Sewers for Fobbing v. R.* (1886), 11 App. Cas. 449, 457; *cf. R. v. Gaisford*, [1892] 1 Q. B. 381; 61 L. J. M. C. 50.

(*l*) See such cases as *R. v. Farrant* (1887), 20 Q. B. D. 58; 57 L. J. M. C. 17; *R. v. Sunderland JJ.*, [1901] 2 K. B. 357; 70 L. J. K. B. 946; *Leeds Corporation v. Ryder*, [1907] A. C. 420.

must, it would appear, take place in open Court (*m*), and the procedure of the Summary Jurisdiction Acts, so far as they relate to civil matters, should, it is submitted, be followed, except that the justices cannot enforce their award. In the case of *Great Northern and City Rail. Co. v. Tillet* (*n*) the procedure under the Summary Jurisdiction Acts was followed without question. There is no provision in the Lands Clauses Acts as to summoning witnesses, but in case of need the provisions of the Summary Jurisdiction Acts would be applicable.

In cases of injury application to justices need not be within six months.

It was for many years considered (on the authority of *Re Edmundson* (*o*)) that where lands had been injuriously affected and no portion thereof had been taken, an application to two justices to assess the amount of damage must be made within six months after the time at which the cause of injury arose, and that such application was a "complaint made before a justice on which he has authority to make an order for the payment of money," and within the terms of section 11 of the Summary Jurisdiction Act, 1848 (11 & 12 Vict. c. 43).

This decision was doubted in *R. v. Hannay* (*p*) and the question was settled by the Court of Appeal in *R. v. Edwards* (*q*). Although the decision in *Re Edmundson* (*r*) had been law for thirty years, the Court of Appeal were of opinion that the justices had no implied authority to settle questions of title (*s*), and that in the absence of that authority the mere assessment of compensation could not be regarded as a determination or order to which the Summary Jurisdiction Acts could apply. From this decision the following consequences result : (1) The application to justices need not be made within six months after the time at which the lands have been injuriously affected. (2) The justices cannot make any order to pay the amount assessed. (3) Payment is not enforceable by distress, but only by action.

Assessment of justices to include injury

In assessing the amount of compensation, justices are required to take into consideration not only the value of the unexpired

(*m*) See Summary Jurisdiction Act, 1879, s. 20, sub-s. 1; Interpretation Act, 1889, s. 13, sub-s. 11.

(*n*) [1902] 1 K. B. 874; 71 L. J. K. B. 525.

(*o*) (1851), 21 L. J. M. C. 193.

(*p*) (1874), 44 L. J. M. C. 27.

(*q*) (1884), 13 Q. B. D. 586; 53 L. J. M. C. 149.

(*r*) *Supra*.

(*s*) Cf. *Great Northern and City Rail. Co. v. Tillet*, [1902] 1 K. B. 874; 71 L. J. K. B. 525.

term in the lands taken, but also the injury done to other lands of the same owner (*t*). In an assessment under section 121, where a claim is made for severance, the assessing tribunal has only jurisdiction to assess compensation under this head for the damage sustained by the other lands during the period for which the lands taken are held (*u*). to other lands of same owner.

The decision of two justices need not be in writing, but may be given verbally (*x*). Decision may be verbal.

If, on application made, justices refuse to exercise their jurisdiction in matters of compensation within their jurisdiction, either party is entitled to apply for a mandamus (*y*). Mandamus.

If compensation is settled by two justices, the costs of the inquiry are in their discretion, and they are required to settle the same accordingly (*z*), but they have no jurisdiction to order or enforce payment of the costs. Costs.

Section 140 (*a*) of the Railways Clauses Consolidation Act, 1845, provides that in all cases where any damages, costs or expenses are by that Act or the special Act, or any Act incorporated therewith directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for, such amount, in case of dispute, shall be ascertained and determined by two justices. Section 85 of the Waterworks Clauses Act, 1847, enacts that if the waterworks be in England or Ireland the above-mentioned section of the Railways Clauses Consolidation Act shall apply. It is doubtful whether the expression "damages not specially provided for" would extend to compensation which is provided for under section 28 of the Waterworks Clauses Act, being "compensation for any damage which may be done in the execution of" the powers under that section, and therefore it is questionable whether such compensation, where it exceeds 50*l.*, could be assessed

(*t*) L. Cl. Act, 1845, s. 63; cf. s. 121.

(*u*) *Bexley Heath Rail. Co. v. North*, [1894] 2 Q. B. 579; 64 L. J. M. C. 17.

(*x*) *R. v. Boyce Combe* (1863), 32 L. J. M. C. 67.

(*y*) *R. v. Stone* (1866), L. R. 1 Q. B. 529; 35 L. J. M. C. 208; *R. v. Vaughan* (1869), L. R. 4 Q. B. 190; *R. v. Kennedy*, [1893] 1 Q. B. 533; 62 L. J. M. C. 168; cf. *Barter v. London County Council* (1890), 63 L. T. 767, at p. 771.

(*z*) L. Cl. Act, 1845, s. 24; cf. *Mayor, &c. of Huddersfield v. Shaw* (1890), 54 J. P. 724.

(*a*) As far as the Railways Clauses Consolidation Act, 1845, is concerned, this section is no longer in force, having been repealed by S. L. R. Act, 1892.

by justices (*b*). Section 85 applies to such sections as 67 and 74 of the Waterworks Clauses Act, which relate to matters more or less incidental to the administration of the Act, which the statute itself when dealing with them denominates as not specially provided for (*b*).

(*b*) *Harpur v. Swansea Corporation*, [1913] A. C. 597, *per* Lord Shaw, at p. 605.

CHAPTER XI.

ARBITRATION (*a*).

THE assessment of compensation under the Lands Clauses Acts may be settled by arbitration in the following cases, unless the special Act provides otherwise:—

In what cases arbitrators have jurisdiction.

(1) Where it is intended to purchase or take lands, and the compensation claimed or offered exceeds 50*l.*, and the interest therein is not less than that of a yearly tenant or of a tenant from year to year (*b*), and the party claiming compensation desires to have the same settled by arbitration, and signifies such desire by notice in writing to the promoters before they have issued their warrant to the sheriff to summon a jury, and states in such notice the nature of the interest in respect of which compensation is claimed, and the amount of compensation so claimed, the amount of compensation is settled by arbitration (*c*).

(1) Claim or offer exceeding 50*l.*

It should be noted that the claimant has the option of having the amount of compensation assessed either by a jury or by arbitration (*d*), but that where he desires to have the amount of compensation settled by arbitration, it is incumbent upon him to state the nature of the interest in respect of which he claims compensation, and the amount of compensation he claims. Unless this is done, the promoters may treat the notice claiming compensation as imperfect, and issue their warrant for the summoning of a jury.

The words “nature of the interest” are construed as synonymous with the words “particulars of the estate and interest” used in section 18 of the Lands Clauses Act, 1845 (*e*), and with the words

Nature of interest.

(*a*) For a fuller treatment of the general law as to arbitration, the reader is referred to such text-books as Russell on Arbitration.

(*b*) L. Cl. Act, 1845, s. 121, *ante*, p. 177.

(*c*) S. 23. Cf. Book II., p. 326.

(*d*) *Lord Fitzhardinge v. Gloucester, &c. Canal Co.* (1872), L. R. 7 Q. B. 776; 41 L. J. Q. B. 316.

(*e*) *Vide ante*, p. 74.

“particulars of his claim” in section 21, and the owner should give such particulars as would enable the promoters to ascertain the true value of his interest, for the purpose of offering him adequate compensation.

Qualifications and limitations in the notice to treat do not restrict or limit the scope of the reference to arbitration (*f*). They simply reserve the right of the promoters to raise, in defence to an action on the award, any answer in law to the landowner's claim.

Description
of interest.

If lands are taken, and their value is in question, it is not sufficient for the owner to state that “he holds under a lease,” without defining the quantity as well as the quality of his interest (*g*). If lands have been injuriously affected, but no part has been taken, it may, under the special circumstances, be sufficient to state merely the quality of an interest; but it is prudent for the owner to give the fullest information at his command (*h*). A misdescription in “the nature of the interest” may be waived if the promoters consent to proceedings by arbitration (*i*).

The statement by an owner of the amount of compensation claimed does not prevent him from asking a larger amount before the assessing tribunal, and there is no provision in the Lands Clauses Acts under which the claim of the owner, or the offer by the promoters, limits in any way the discretion of the justices, arbitrators, or jury (*k*).

(2) Sufficiency
of valuation of
a surveyor.

(2) The sufficiency of the valuation of a surveyor (*l*) can, on notice in writing to the promoters, be submitted to arbitration by an owner who was absent from the kingdom, or who could not be found, at any time before he has applied to the Court for payment or investment of the amount deposited (*m*). The question to be submitted to the arbitrator is whether the sum deposited by the promoters is a sufficient sum, or whether any and what further

(*f*) *Re Chilworth Gunpowder Co. and Manchester Ship Canal* (1891), 8 Times L. R. 79.

(*g*) *Healey v. Thames Valley Rail. Co.* (1864), 34 L. J. Q. B. 52; *In re North Staffordshire Rail. Co. and Landor* (1848), 2 Ex. 235.

(*h*) *Cameron v. Charing Cross Rail. Co.* (1864), 33 L. J. C. P. 313.

(*i*) *Lovering v. City of London, &c. Subway Co.* (1891), 7 Times L. R. 301. 600.

(*k*) *Cf. Robertson v. City and South London Rail. Co.* (1904), 20 Times L. R. 395; *Crawford v. McSwiney*, [1904] 2 Ir. R. 15.

(*l*) Under L. Cl. Act, 1845, ss. 58—63, *vide supra*, p. 175.

(*m*) S. 64.

sum ought to be paid or deposited by them (*n*). If the arbitrators award that a further sum ought to be paid or deposited by the promoters, the latter must pay or deposit the further sum within fourteen days after the making of the award. In default, the award may be enforced by attachment, or the amount recovered with costs by action (*o*). If the arbitrators find the valuation to have been sufficient, costs, to be determined by them, are in their discretion (*p*); but if they find it has not been sufficient, all costs are to be borne by the promoters (*q*).

(3) Where land has been taken for or injuriously affected by the execution of the works, and the compensation claimed exceeds 50*l.*, the owner, if he desires to have the amount of compensation settled by arbitration, may give notice in writing to the promoters, stating the nature of the interest in such lands in respect of which he claims compensation, and the amount of compensation claimed (*r*). A limitation must be noted where an interest in lands is taken less than that of a yearly tenant or of a tenant from year to year (*s*), since in this case the amount of compensation is settled by justices. This limitation does not apply to cases of injuriously affecting; and wherever the owner claims a sum exceeding 50*l.* for injuriously affecting, he is entitled to have the amount settled by arbitration, although his interest is less than that of a yearly tenant or tenant from year to year. It would appear that where a claim for injuriously affecting is made before two justices it must be limited to the period of time for which the land proposed to be taken is held (*t*).

(3) Claims in case of taking or injuriously affecting.

Arbitrations for the assessment of compensation under the Lands Clauses Acts were held to be within the provisions of the Common Law Procedure Act, 1854, relating to arbitration by consent (*u*).

Arbitration Act, 1889.

(*n*) S. 65.

(*o*) S. 66.

(*p*) S. 67. By s. 1 of the Lands Clauses (Taxation of Costs) Act, 1895 (*vide post*, pp. 202, 440), either party can require the amount of such costs to be taxed by a taxing master.

(*q*) S. 67.

(*r*) S. 68.

(*s*) S. 121, *ante*, p. 177.

(*t*) *Beasley Heath Rail. Co. v. North*, [1894] 2 Q. B. 579; 64 L. J. M. C. 17.

(*u*) Ss. 3—17. *Rhodes v. Airedale Drainage Commissioners* (1876), 1 C. P. D. 402; *Re Dare Valley Rail. Co. and Rhys* (1869), L. R. 4 Ch. 554; *Ex parte Harper* (1874), L. R. 18 Eq. 539; *Re Bidder and North Staffordshire Rail. Co.* (1879), 4 Q. B. D. 412; 48 L. J. Q. B. 248. *In re Harper and Great Eastern Rail. Co.* (1875), L. R. 20 Eq. 39; 44 L. J. Ch. 507; and *Re Newbold and Metropolitan Rail. Co.* (1863), 14 C. B. N. S. 405, are overruled on this point.

These sections were repealed by the Arbitration Act, 1889 (*x*), but were re-enacted in substance, and the provisions of the Arbitration Act, 1889, with reference to arbitration, except so far as they are inconsistent with the Lands Clauses Acts, apply to all arbitrations under these Acts (*y*).

(4) Value of lands in case of pre-emption.

(4) If a person entitled to pre-emption in respect of superfluous lands is desirous of purchasing such lands, and there is no agreement as to price, the amount is ascertained by arbitration, and the costs are in the discretion of the arbitrators (*z*).

(5) Arbitration by consent.

(5) It is competent for the promoters and the owner to agree to refer any question of compensation to an arbitrator, even though the amount claimed should be less than 50*l.*, or the interest of the owner not greater than that of a yearly tenant (*a*), and in such a case it is not necessary to comply with all the statutory forms (*b*).

Arbitrator.

Any impartial person may be appointed an arbitrator or umpire. Interest known to the owner is a disqualification (*c*); but a disqualification of this nature may be waived (*d*). The fact that an arbitrator during the pendency of an arbitration and before making his award had given evidence on behalf of one of the parties in another inquiry has been held not to constitute a necessary disqualification (*e*). A named arbitrator is not disqualified merely because circumstances may arise or exist such as to cause a suspicion of bias (*f*).

If an improper person is appointed arbitrator, it has been held in some cases that an application may be made to restrain further proceedings by injunction (*g*): but the High Court has no general

(*x*) S. 26.

(*y*) Arbitration Act, 1889, s. 24, Appendix, p. 472; cf. *Tabernacle Permanent Building Society v. Knight*, [1892] A. C. 298; 62 L. J. Q. B. 50.

(*z*) S. 130, L. Cl. Act, 1845; *Re Eyre's Trusts*, (1869) W. N. 76; *vide infra*, p. 313.

(*a*) *Collins v. South Staffordshire Rail. Co.* (1852), 21 L. J. Ex. 247; *Levick v. Epsom, & Co. Rail. Co.* (1859), 1 L. T. 60; *Caledonian Rail. Co. v. Lockhart* (1860), 3 Macq. H. L. (Sc.) 808.

(*b*) *Collins v. South Staffordshire Rail. Co.* (1852), 21 L. J. Ex. 247.

(*c*) *In re Elliot, Ex parte South Devon Rail. Co.* (1848), 2 De G. & Sm. 17.

(*d*) *Re Clout and Metropolitan and District Rail. Cos.* (1882), 46 L. T. 141.

(*e*) *In re Haigh and London and North Western Rail. Co.*, [1896] 1 Q. B. 649; 65 L. J. Q. B. 512.

(*f*) *Jackson v. Barry Rail. Co.*, [1893] 1 Ch. 238; *Eckersley v. Mersey Docks and Harbour Board*, [1894] 2 Q. B. 667; *Bright v. River Plate Construction Co.*, [1900] 2 Ch. 835; 70 L. J. Ch. 59.

(*g*) *Pickering v. Cape Town Rail. Co.* (1865), L. R. 1 Eq. 84; *Malmesbury*

jurisdiction to restrain by injunction any person from acting without authority (*h*).

Where the arbitrator or umpire misconducts himself the High Court may remove him, or, if the award has been made, may set the award aside (*i*). Removal for misconduct.

If it is intended that the assessment should be made by an umpire, and that no formal inquiry should be held before the arbitrators sitting alone, there is no objection to the promoters or the owner appointing as arbitrator their or his surveyor (*k*). The arbitrators, in such a case, do no more than meet for the appointment of an umpire.

Before entering into the consideration of matters referred, an arbitrator or umpire is required to make a declaration of impartiality before a justice. Such declaration is to be annexed to the award, and it is a misdemeanour wilfully to act contrary thereto (*l*). The declaration required from an arbitrator or umpire can be made before any justice, without reference to the locality in which the lands are situated (*m*), and at any time before entering upon the question in dispute (*n*). Where a party has consented to waive any objection on the ground that a declaration has not been made, the Court will not, on his application, set an award aside (*o*). Where, however, there was a failure to annex the declaration to the award by the umpire and the claimant had no knowledge of such failure the Court subsequently set aside the award (*p*). Declaration by arbitrators.

The method of appointment of an arbitrator or arbitrators and umpire is given in sections 25—30 of the Lands Clauses Act, 1845, which are not altered by the Arbitration Act, 1889 (*q*). Unless both parties concur in the appointment of a single arbitrator, Appointment of arbitrators and umpire.

Rail. Co. v. Budd (1876), 2 Ch. D. 113; 45 L. J. Ch. 271; *Beddow v. Beddow* (1878), 9 Ch. D. 89; 47 L. J. Ch. 570.

(*h*) *London and Blackwall Rail. Co. v. Cross* (1886), 31 Ch. D. 354; 55 L. J. Ch. 313; cf. *In re East London Rail. Co., Oliver's Claim* (1890), 24 Q. B. D. 507.

(*i*) Arbitration Act, 1889, s. 11, sub-ss. 1 and 2, *vide post*, p. 241. See Russell on Arbitration.

(*k*) *In re Elliot, Ex parte South Devon Rail. Co.* (1848), 2 De G. & Sm. 17.

(*l*) L. Cl. Act, 1845, s. 33; but cf. *post*, Book II., p. 325.

(*m*) *Davies v. South Staffordshire Rail. Co.* (1851), 21 L. J. M. C. 52.

(*n*) *Re Bradshaw's Arbitration* (1848), 12 Q. B. 562; 17 L. J. Q. B. 362.

(*o*) *Palmer v. Metropolitan Rail. Co.* (1862), 31 L. J. Q. B. 259; cf. *Levick v. Epsom, &c. Rail. Co.* (1859), 1 L. T. 60.

(*p*) *Mayor, &c. of Ludlow v. Prosser* (1906), 22 Times L. R. 597.

(*q*) But cf. Book II., pp. 319, 320.

each party, on the request of the other, is to nominate and appoint an arbitrator. It has been said to be the duty of the landowner before nominating an arbitrator to make an attempt to obtain the concurrence of the promoters to the appointment of a single arbitrator (*r*); but there is no obligation upon a landowner to take this course (*s*). An agreement that two persons named shall nominate the arbitrator is not a concurrence in the appointment of a single arbitrator (*t*). On the part of the promoters, such appointment is to be under their hands, or any two of them, or their secretary or clerk; and on the part of the owner, under his hand, or in the case of a corporation aggregate, under the corporate seal (*u*). Where parties who had agreed to refer, according to the provisions of the Lands Clauses Act, 1845, had not complied with all the formalities prescribed by that Act, but the agreement had been acted upon, it was held to be sufficient that the appointment of an arbitrator on behalf of a company should be signed by the secretary (*v*). The nomination of an arbitrator by the promoters under protest does not in any way admit that the landowner has any claim to compensation (*x*), or affect the question of liability.

Submission to arbitration not revocable except by consent or by leave of Court.

The appointment is to be delivered to the arbitrator, and is a submission to arbitration, not revocable, except by consent (*u*). The Court has revoked a submission to arbitration under the Lands Clauses Acts on the ground of the improper reception of evidence, and this was held a convenient way of testing the validity of certain heads of claim (*y*). Section 1 of the Arbitration Act, 1889, makes a submission irrevocable except by leave of the Court or a judge, and it is only in exceptional cases that the Court or a judge would interfere in matters within the jurisdiction of the arbitrator (*z*).

Single arbitrator.

If, for fourteen days after a dispute has arisen, and a request in writing to appoint an arbitrator has been made, no appointment

(*r*) *Yates v. Mayor, &c. of Blackburn* (1860), 29 L. J. Ex. 447.

(*s*) *Eagle v. Charing Cross Rail. Co.* (1867), 36 L. J. C. P. 297, 303.

(*t*) *Martin v. Leicester Waterworks Co.* (1858), 27 L. J. Ex. 432.

(*u*) L. Cl. Act, 1845, s. 25.

(*v*) *Collins v. South Staffordshire Rail. Co.* (1852), 21 L. J. Ex. 247; *Faviell v. Eastern Counties Rail. Co.* (1848), 17 L. J. Ex. 223.

(*x*) *Sutton Harbour Improvement Commissioners v. Hitchens* (1851), 21 L. J. Ch. 73.

(*y*) *In re Lord Gerard and London and North Western Rail. Co.*, [1894] 2 Q. B. 915; [1895] 1 Q. B. 459; 63 L. J. Q. B. 764; 64 L. J. Q. B. 260; but see *In re Palmer & Co. and Hosken & Co.*, [1898] 1 Q. B. 131.

(*z*) *East and West India Dock Co. v. Kirk* (1887), 12 App. Cas. 738; 57 L. J. Q. B. 295; *James v. James* (1889), 23 Q. B. D. 12; 58 L. J. Q. B. 424.

is made, the party making such request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and the award or determination of such single arbitrator is final (*a*).

If an arbitrator is so to act for both parties, on the appointment of one party, he must receive from such party a separate and distinct appointment to act in that capacity, and this appointment can only be made after the lapse of fourteen days after notice of the actual appointment of an arbitrator to the other party (*b*).

The appointment of an arbitrator is not revocable except by consent, and is a submission to arbitration which may be made a rule of Court on the application of either of the parties (*c*). The Courts have a discretion to revoke the submission to arbitration, and the same principle applies as in submissions by consent (*d*). On an application to revoke a submission, an appeal lies from the judge in Chambers to the Court of Appeal (*e*).

Appointment is not revocable.

Since the Arbitration Act, 1889, submissions have the same effect in all respects as if they had been made an order (or a rule) of Court and it seems to be unnecessary to apply to have them made rules of Court (*f*).

Making submission a rule of Court.

If an arbitrator dies or becomes incapable to act, and the party, who had appointed such arbitrator, does not, within seven days after notice in writing, appoint some other person, the other arbitrator may proceed *ex parte* (*g*); and so, also, in the case where one of the arbitrators refuses or neglects to act for seven days (*h*);

Death or incapacity of an arbitrator.

(*a*) L. Cl. Act, 1845, s. 25.

(*b*) *Bradley v. London and North Western Rail. Co.* (1850), 20 L. J. Ex. 3; cf. *In re Douglas and Belfast Corporation*, [1909] 2 Ir. R. 30.

(*c*) S. 36, L. Cl. Act, 1845; *Re Chilworth Gunpowder Co. and Manchester Ship Canal Co.* (1891), 8 Times L. R. 79; cf. Arb. Act, 1889, s. 1.

(*d*) *In re Lord Gerard and London and North Western Rail. Co.*, [1894] 2 Q. B. 915; [1895] 1 Q. B. 459; 63 L. J. Q. B. 764; 64 L. J. Q. B. 260; *Fariell v. Eastern Counties Rail. Co.* (1848), 17 L. J. Ex. 223; *East and West India Docks Co. v. Kirk* (1887), 12 App. Cas. 738; 57 L. J. Q. B. 295.

(*e*) *In re Portland U. C. and Tilley & Co.*, [1896] 2 Q. B. 98; 65 L. J. Q. B. 527.

(*f*) Arb. Act, 1889, ss. 1, 25. As to the older practice, see *Re Taylor* (1821), 5 B. & Ald. 217; *In re Midland Rail. Co. and Heming* (1847), 11 Jur. 904; *In re Hawley and North Staffordshire Rail. Co.* (1848), 2 De G. & S. 33; *Gething v. Fotheringham* (1865), 13 W. R. 96; *Re Bradshaw's Arbitration* (1848), 12 Q. B. 562; 17 L. J. Q. B. 362.

(*g*) Arb. Act, 1889, s. 6 (*b*).

(*h*) Ss. 26, 29, 30, L. Cl. Act, 1845; *In re Hawley and North Staffordshire Rail. Co.* (1848), 2 De G. & S. 33.

and such arbitrator may proceed to make an award *ex parte*, although no previous appointment of an umpire has been made, such an appointment not being a condition precedent to the *ex parte* proceedings (*i*); but if a single arbitrator dies or becomes incapable before making his award, the matter has to commence *de novo* (*j*).

Appointment
of umpire.

Before entering upon the matters referred to them, arbitrators are required to appoint, by writing under their hands, an umpire to give a final decision on matters on which they differ, and if they fail to do so for seven days after request of either party to the arbitration, then the Board of Trade, upon the application of either party, appoint an umpire (*k*).

If an umpire appointed by the arbitrators dies or becomes incapable to act, the arbitrators are required, after such death or incapacity, forthwith to appoint another umpire in his place, and if they do not so appoint, their power is transferred to the Board of Trade (*k*). Where an umpire appointed by arbitrators refuses to act, or where an umpire appointed by the Board of Trade either refuses to act or is incapable of acting, or dies, there is no provision for a further appointment under the Lands Clauses Acts. In such a case the amount of compensation must be settled by the verdict of a jury (*l*), unless a new appointment can be made under section 5 of the Arbitration Act, 1889.

Time for.

It is not necessary that an umpire should be appointed within twenty-one days of the appointment of the arbitrator last nominated, even though the time for making an award has not been extended, since the incapacity to award does not affect the powers given for the appointment of an umpire (*m*). But the appointment must be within the period of three months referred to in section 23 (*n*). The appointment of an umpire, if made by lot and not by choice, is invalid (*o*); but where two suitable persons for the

(*i*) *Shepherd v. Corporation of Norwich* (1885), 30 Ch. D. 553; 54 L. J. Ch. 1050.

(*j*) Ss. 26, 29, 30, L. Cl. Act, 1845; *In re Hawley and North Staffordshire Rail. Co.* (1848), 2 De G. & S. 33.

(*k*) Ss. 27, 28, L. Cl. Act, 1845; amended by L. Cl. (Umpire) Act, 1883, s. 1.

(*l*) S. 23, L. Cl. Act, 1845.

(*m*) *Re Bradshaw's Arbitration* (1848), 17 L. J. Q. B. 362; *Holdsworth v. Wilson* (1863), 32 L. J. Q. B. 289; cf. *East and West India Dock Co. and Birmingham, &c. Rail. Co. v. Bradshaw* (1849), 5 Rail. Cas. 527.

(*n*) *Re Bradshaw's Arbitration* (1848), 17 L. J. Q. B. 362; *Holdsworth v. Wilson* (1863), 32 L. J. Q. B. 289.

(*o*) *In re Cusell* (1829), 9 B. & C. 624.

office of umpire have been chosen, an appointment is not bad because the selection of one of such persons has depended on chance (*p*).

The arbitrators or umpire have power to regulate the course of procedure in matters before them ; but, like other judges, they are bound to observe the ordinary rules which are laid down for the administration of justice, and if they fail to observe these rules, to the prejudice of either party, the High Court will set aside the award (*q*). Section 32 of the Lands Clauses Act, 1845, empowers arbitrators or an umpire to call for documents, and to examine witnesses on oath. It is not absolutely necessary to take evidence on oath, though it is the ordinary practice (*r*). The Arbitration Act, 1889, s. 8, entitles either party to an arbitration to sue out a writ of *subpœna ad testificandum*, or a writ of *subpœna duces tecum*, and the attendance of witnesses can, if required, be compelled under section 18 of that Act. But the application of the writ of *subpœna duces tecum* is confined to documents which the person, to whom it is given, could be compelled to produce on the trial of an action, and the Court has not power to issue a commission for the examination of witnesses (*s*). Any person who wilfully and corruptly gives false evidence in an arbitration, is guilty of perjury, and may be prosecuted accordingly (*t*). And if any person refuses to obey arbitrators or an umpire, a summons should be taken out at chambers, which is absolute in the first instance, and can be enforced by attachment (*u*). If either party refuses to attend, the arbitrators or umpire can proceed *ex parte* (*x*).

Control of arbitrators or umpire over conduct of proceedings.

When the arbitrators and their umpire are experts, and it is the intention of the parties that they should settle the value and not act as formal arbitrators, it is not necessary for them to give formal notice to the parties or to hear witnesses (*y*).

Expert arbitrators.

(*p*) *Neale v. Ledger* (1812), 16 East, 51; *In re Hopper* (1867), L. R. 2 Q. B. 367.

(*q*) *Haigh v. Haigh* (1862), 31 L. J. Ch. 420; *Whatley v. Morland* (1833), 2 Dowl. P. C. 249.

(*r*) *Wakefield v. Llanelly, &c. Rail. Co.* (1865), 3 De G. J. & S. 11.

(*s*) *In re Shaw and Ronaldson*, [1892] 1 Q. B. 91; 61 L. J. Q. B. 141; *Re Dreyfus and Paul* (1893), 9 Times L. R. 358; cf. Book II., p. 322.

(*t*) Perjury Act, 1911 (1 & 2 Geo. 5, c. 6), s. 1.

(*u*) *In re Guarantee Society and Levy* (1844), 1 D. & L. 907.

(*x*) *Re Hewitt and Portsmouth Waterworks Co.* (1862), 10 W. R. 780.

(*y*) *Bottomley v. Ambler* (1878), 38 L. T. 545; 26 W. R. 566, (C. A.) (reversing Jessel, M. R.); *Wright v. Howson* (1888), 4 Times L. R. 386.

Award to be
in writing.

Section 35 of the Lands Clauses Act, 1845, requires that the award shall be in writing and shall be delivered to the promoters. It must be drawn so as to give an assessment of the money value of the interest in lands, or of the injury to the interest in lands, claimed in the submission. The power of the arbitrators or umpire is limited to the award of money compensation, and, except by consent of the parties, no directions or conditions can be inserted (*z*). The arbitrators or umpire have no jurisdiction to award interest as between the date when the right of the claimant first accrued and the date of the award (*a*).

Award not to
be at variance
with sub-
mission.

It is important that there should be no variance between the language used in the submission, and that used in the award, to describe the interest in lands for which compensation is claimed (*b*); or a question may arise, whether the arbitrators have not awarded in respect of matters not submitted to their decision (*c*).

Costs.

On the question whether an award should include costs, *vide infra*, pp. 198, 202.

Special case.

It is competent for the arbitrators or umpire to state their award, or part thereof, in the form of a special case for the opinion of the High Court (*d*). If the award is stated by the arbitrators or an umpire in the form of a special case, an appeal can be brought against the decision of the High Court thereon (*e*), and the costs of the appeal are in the discretion of the Court (*f*).

By section 19 of the Arbitration Act, 1889, the arbitrators or umpire may at any stage of the proceedings, and shall, if so directed by the Court or a judge, state in the form of a special case

(*z*) *Vide post*, p. 224.

(*a*) *In re Richard and Great Western Rail. Co.*, [1905] 1 K. B. 68; 74 L. J. K. B. 9.

(*b*) *Barker v. North Staffordshire Rail. Co.* (1848), 12 Jur. 321; *Re Bradshaw's Arbitration* (1848), 17 L. J. Q. B. 362; *Re North Staffordshire Rail. Co. and Landor* (1848), 17 L. J. Ex. 350; *Wakefield v. Llanelly Rail., &c. Co.* (1865), 3 De G. J. & S. 11.

(*c*) *North Staffordshire Rail. Co. v. Wood* (1848), 17 L. J. Ex. 354.

(*d*) Arb. Act, 1889, s. 7; cf. *In re Dare Valley Rail. Co.* (1869), L. R. 4 Ch. 554; *Rhodes v. Airedale Drainage Commissioners* (1876), 1 C. P. D. 402; *Ex parte Harper* (1874), L. R. 18 Eq. 539; *In re Harper and Great Eastern Rail. Co.* (1875), L. R. 20 Eq. 39; 44 L. J. Ch. 507.

(*e*) *Re Bidder and North Staffordshire Rail. Co.* (1879), 4 Q. B. D. 412; 48 L. J. Q. B. 248; *In re Kirkleatham Local Board and Stockton and Middlesbrough Water Board*, [1893] 1 Q. B. 375; A. C. 444; 62 L. J. Q. B. 180.

(*f*) *In re Gonty and Manchester, Sheffield and Lincolnshire Rail. Co.*, [1896] 2 Q. B. 439, 451; 65 L. J. Q. B. 625. As to the costs of the special case, see *post*, p. 200.

for the opinion of the Court any question of law arising in the course of arbitration. This section has an important effect on procedure in arbitrations. It may be presumed that the arbitrators or umpire would state, in the form of a special case for the opinion of the Court, any question of law of a substantial kind *bonâ fide* raised in the course of the arbitration ; but should this not be done, the Court or a judge has power to order that a special case shall be stated raising any such question of law (*g*), or to set aside the award on the ground of misconduct (*h*). It is not necessary to wait until the arbitrator has expressed an opinion adverse to the party asking for a special case (*i*). Any question of law can be raised in a convenient form by applying the provisions of the above section, but it has been held that there is no appeal from the decision of the High Court on a special case stated under this section, and that the costs incurred in connection with the special case are costs in the arbitration and cannot be dealt with by the High Court (*k*). If the High Court is asked to compel an arbitrator to state a special case pending the arbitration, terms as to costs may be imposed (*k*). The only method in which to obtain the opinion of the High Court during the progress of an arbitration in such a form that an appeal will lie appears to be to apply by motion to revoke the submission to arbitration (*l*). An arbitrator cannot be directed to state a special case for the opinion of the Court under section 19 when the application is not made until after the arbitration has been concluded (*m*).

(*g*) *Re Nuttall and Lynton and Barnstaple Rail. Co.* (1900), 82 L. T. 17; followed *Re Pearson and Great Western Rail. Co.* (1904), C. A., Feb. 15th, not reported; cf. *In re Gough and Mayor of Liverpool* (1890), 6 Times L. R. 453. Appeal lies from judge in chambers to Divisional Court: *In re Frere and Staveley Taylor & Co. and North Shore Mill Co.*, [1905] 1 K. B. 366; 74 L. J. K. B. 208.

(*h*) *In re Palmer & Co. and Hosken & Co.*, [1898] 1 Q. B. 131; 67 L. J. Q. B. 1.

(*i*) *In re Spillers and Baker and Leetham & Sons*, [1897] 1 Q. B. 312; 66 L. J. Q. B. 326.

(*k*) *In re Knight and Tabernacle Building Society*, [1892] 2 Q. B. 613; 62 L. J. Q. B. 33.

(*l*) *In re Lord Gerard and London and North Western Rail. Co.*, [1894] 2 Q. B. 915; [1895] 1 Q. B. 459; 63 L. J. Q. B. 764; 64 L. J. Q. B. 260; but see *In re Palmer & Co. and Hosken & Co.*, *supra*.

(*m*) *In re Montgomery, Jones & Co. and Liebenthal & Co.* (1898), 78 L. T. 406.

Arbitrator should not employ solicitor of one of the parties.

It is improper that the arbitrator should employ the solicitor and advocate of one of the parties to the reference to draw up his award, although the Court refused to interfere, when a strong affidavit was made by the arbitrator that such solicitor, being also his private solicitor, had only been consulted as to the form in which the award should be made (*n*). So long as an arbitrator exercises his own judgment, he may consult an impartial third person without the assent of the parties (*o*).

Time within which award should be made.

If arbitrators do not make their award within twenty-one days after the day on which the last of such arbitrators is appointed, or within such extended time as shall have been appointed under their hands, the matters referred to them are determined by the umpire (*p*). The arbitrators or the umpire cannot, unless both parties consent, or the time is enlarged by the Court or a judge, award after an interval of more than three months from the date on which their authority was complete (*q*). The same rule applies where a single arbitrator is appointed by the owner of lands injuriously affected on the failure of the promoters to appoint, or concur in appointing, an arbitrator (*r*). If no award has been made within three months, and there has been no extension of time, the question of compensation must be settled by a jury (*s*). The umpire has a fresh period of three months from the date at which the arbitration devolves on him (*t*). The statutory limit of time for the making of an award is for the protection of the parties, and can be waived by their consent, such consent operating as a new submission (*u*).

Power of Court to enlarge time.

Section 9 of the Arbitration Act, 1889, not being inconsistent with any provision in the Lands Clauses Acts, applies, by virtue of section 24 of the Arbitration Act, 1889, to arbitrations under the Lands Clauses Acts, and the time for making an award may from

(*n*) *Underwood v. Bedford and Cambridge Rail. Co.* (1861), 31 L. J. C. P. 10.

(*o*) *Anderson v. Wallace* (1835), 3 Cl. & F. 26; *Caledonian Rail. Co. v. Lockhart* (1860), 3 Macq. H. L. (Sc.) 808; cf. *Whitmore v. Smith* (1860), 29 L. J. Ex. 402.

(*p*) L. Cl. Act, 1845, s. 31.

(*q*) L. Cl. Act, 1845, s. 23; Arb. Act, 1889, s. 9.

(*r*) *Evans v. Lancashire and Yorkshire Rail. Co.* (1853), 22 L. J. Q. B. 254.

(*s*) S. 23, L. Cl. Act, 1845.

(*t*) *Skerratt v. North Staffordshire Rail. Co.* (1848), 17 L. J. Ch. 161; *In re Pullen and Corporation of Liverpool* (1882), 51 L. J. Q. B. 285.

(*u*) *Palmer v. Metropolitan Rail. Co.* (1862), 31 L. J. Q. B. 259; cf. *Caledonian Rail. Co. v. Lockhart* (1860), 3 Macq. H. L. (Sc.) 808.

time to time be enlarged by order of the Court or a judge, whether the time for making the award has expired or not (*x*).

Section 10 of the Arbitration Act, 1889, is applicable to arbitrations under the Lands Clauses Acts, and its effect is that all such submissions to arbitration will be deemed to contain a clause giving the Court power to refer back the award to the arbitrator or umpire (*y*), even though he be *functus officio* (*z*). The grounds on which matters can be remitted to an arbitrator for reconsideration are fully dealt with in the case of *In re Montgomery Jones & Co. and Liebenthal & Co.* (*a*).

Power to
remit award.

Section 35 of the Lands Clauses Act, 1845, enacts that the arbitrators shall deliver their award in writing to the promoters, and that the promoters shall retain the same, and shall at their own expense, on demand, furnish a copy to the other party, and shall at all times, on demand, produce the same for inspection. An application for an order to compel the promoters to take up an award and to furnish a copy to the other party can be made in the High Court (*b*), and it is no answer to such an application that the promoters appointed their arbitrator under protest (*c*). Section 35 applies to an arbitration under section 78 of the Railways Clauses Act, 1845, and in a proper case the Court will not refuse to grant a prerogative writ of mandamus (*d*).

Promoters
can be com-
pelled to take
up award.

By section 12 of the Arbitration Act, 1889, an award on a submission may, by leave of the High Court or a judge, be enforced in the same manner as a judgment or order to the same effect, but inasmuch as an award under the Lands Clauses Acts only

Enforcement
of award.

(*x*) *In re Dare Valley Rail. Co.* (1869), L. R. 4 Ch. 554; 38 L. J. Ch. 417; *Denton v. Strong* (1874), L. R. 9 Q. B. 117; 43 L. J. Q. B. 41. These decisions are upon sections of the Common Law Procedure Act, 1854, repealed, but in effect re-enacted by the Arbitration Act, 1889.

(*y*) *In re Keighley & Co. and Durant & Co.*, [1893] 1 Q. B. 405, 409; 62 L. J. Q. B. 105.

(*z*) *In re Stringer and Riley Bros.*, [1901] 1 K. B. 105; 70 L. J. K. B. 19.

(*a*) (1898), 78 L. T. 406, 408, *per* Chitty, L. J.

(*b*) *R. v. South Devon Rail. Co.* (1850), 20 L. J. Q. B. 145; *In re Harper and Great Eastern Rail. Co.* (1875), L. R. 20 Eq. 39; 44 L. J. Ch. 507; *R. v. Barton and Immingham Light Rail. Co.*, [1912] 3 K. B. 72. These cases are inconsistent with *Sutton Harbour Improvement Commissioners v. Hitchens* (1853), 16 Beav. 381; but by the Judicature Acts the Court of Chancery is simply a division of the High Court.

(*c*) *London and North Western Rail. Co. v. Walker*, [1900] A. C. 109; 69 L. J. Q. B. 367.

(*d*) *R. v. London and North Western Rail. Co.*, [1894] 2 Q. B. 512; 63 L. J. Q. B. 695.

settles the amount of, and not the right to, compensation, the Court or a judge would probably not apply the above provision in any case in which there is a *bonâ fide* question raised, either as to the right to claim compensation, or as to the title of the claimant (*e*). Prior to the Arbitration Act, 1889, the Courts would not interfere by motion to enforce awards under the Lands Clauses Acts (*f*).

Payment of
arbitrators.

The promoters are bound to pay the arbitrators a reasonable sum for their award, and the statute does not take away the arbitrators' lien (*g*); but if half the costs are to be borne by the owner, it would be the right course for the owner to offer to pay his share of the arbitrators' charges, before applying for a mandamus against the promoters. If a landowner, instead of proceeding under section 35, pays the umpire's fees and himself takes up the award, he cannot recover the sums so paid by him to the umpire in an action against the promoters (*h*). When fees have once been paid, whether by the promoters or by the landowner, they can only be recovered on the ground that they have been obtained by duress or are extortionate (*i*).

In his award the umpire should, if required, separate the sum which he awards to himself for his charges from the sum awarded to the arbitrators for their charges (*k*).

Arbitrators'
costs.

The amount of the costs incurred in the reference and award should be ascertained and stated in the award itself; otherwise they are liable to taxation in the ordinary course (*l*). Where the amount awarded includes a bill of costs to solicitors employed by the umpire to draw up the award, such bill becomes taxable under section 38 of the Solicitors Act, 1843 (*m*).

(*e*) Cf. *In re Willesden L. B. and Wright*, [1896] 2 Q. B. 412; 65 L. J. Q. B. 567.

(*f*) *In re Walker and Beckenham Local Board*, (1884), 50 L. T. 207; *Re Newbold and Metropolitan Rail. Co.* (1863), 14 C. B. N. S. 405.

(*g*) *R. v. South Devon Rail. Co.* (1850), 20 L. J. Q. B. 145; cf. *R. v. Cambrian Rail. Co.* (1869), L. R. 4 Q. B. 320; *Crampton v. Ridley* (1887), 20 Q. B. D. 48; *R. v. London and North Western Rail. Co.*, [1899] 1 Q. B. 921, at p. 926; 68 L. J. Q. B. 685.

(*h*) *Earl of Shrewsbury v. Wirrall Railways Committee*, [1895] 2 Ch. 812; 64 L. J. Ch. 850; and cf. *Llandrindod Wells Water Co. v. Hawksley* (1903), 20 Times L. R. 241.

(*i*) *Llandrindod Wells Water Co. v. Hawksley* (1903), 20 Times L. R. 241.

(*k*) *In re Gilbert and Wright* (1903), 20 Times L. R. 164.

(*l*) *In re Prebble and Robinson*, [1892] 2 Q. B. 602.

(*m*) *In re Collyer-Bristow & Co.*, [1901] 2 K. B. 839; 70 L. J. K. B. 941.

It is a good return to a mandamus ordering the promoters to take up an award and to furnish a copy to the other party that the lands of the owner have not been injuriously affected (*n*), or that the claimant has been paid an agreed sum in full satisfaction of his claim (*o*). But, in showing cause against a rule for a mandamus to take up an award, the promoters will not be allowed to raise the objection, that the notice under section 23 of the Lands Clauses Act, 1845 (*p*), was not properly given (*q*).

That lands have not been injured is a good answer to a mandamus to take up award.

The evidence of an arbitrator, in an action for the enforcement of his award, is admissible for certain purposes, and within certain limits. An arbitrator is a competent witness to state matters of fact, which have taken place before him up to the time when he proceeded to make his award, so far as they are relevant in a plea to his jurisdiction, which alleges that he has mistaken the subject-matter referred to him, and has taken into account questions not submitted to his decision (*r*). But the award is a written document which speaks for itself (*s*), and the evidence of the arbitrator or umpire is not admissible to explain its terms, or the considerations which influenced him in fixing the amount (*r*).

Capacity of an arbitrator as a witness.

An arbitrator is not liable in an action for negligence (*t*).

An award under the Lands Clauses Acts is not invalidated by any irregularity or error in matter of form (*u*), nor by any informalities in it (*x*), and the arbitrator may correct in an award any clerical mistake or error arising from any accidental slip or omission (*y*).

Arbitrator not liable for negligence. Formal defects and clerical errors.

(*n*) *R. v. Cambrian Rail. Co.* (1859), L. R. 4 Q. B. 320; 38 L. J. Q. B. 198.

(*o*) *R. v. West Midland Rail. Co.* (1862), 11 W. R. 857.

(*p*) *Ante*, p. 185.

(*q*) *R. v. Sutton Harbour Commissioners* (1853), 2 W. R. 10.

(*r*) *Buccleuch v. Metropolitan Board of Works* (1867), L. R. 3 Ex. 306; 5 Ex. 221; 5 H. L. 418; 41 L. J. Ex. 137; cf. *In Re Dare Valley Rail. Co.* (1868), L. R. 6 Eq. 429; 37 L. J. Ch. 719.

(*s*) Cf. *O'Rourke v. Commissioner for Railways* (1890), 15 App. Cas. 371; 59 L. J. P. C. 72.

(*t*) *Chambers v. Goldthorpe*, [1901] 1 K. B. 624; 70 L. J. K. B. 482: though he might be liable, where his award is set aside on the ground of misconduct, in an action for the return of fees paid for a consideration which had wholly failed: cf. *Re Hall and Hinds* (1841), 2 Man. & G. 847.

(*u*) Lands Clauses Act, 1845, s. 37.

(*x*) *In re Harper and Great Eastern Rail. Co.* (1875), L. R. 20 Eq. 39; 41 L. J. Ch. 507; cf. *Lindsay v. Direct London and Portsmouth Rail. Co.* (1850), 19 L. J. Q. B. 417.

(*y*) Arb. Act, 1889, s. 7 (c).

If arbitration fail, compensation to be settled by a jury.

If, through any cause, arbitration proceedings fail, and no final award is made, the question of compensation must be settled by a jury, and, apart from agreement (*z*), there is no provision in the Lands Clauses Act, 1845, for commencing fresh steps with a view to a second arbitration (*a*).

Costs.

The costs of arbitration proceedings (*b*) are borne by the promoters, unless the arbitrators (*c*) award the same (*d*) or a less sum than the promoters have offered, in which case each party bears his own costs, and the costs of the arbitrators are paid in equal proportion. Such costs include the costs of a special case stated by an arbitrator by virtue of his powers under section 19 of the Arbitration Act, 1889, which fall to be dealt with under the provisions of the Lands Clauses Act, 1845, and not under those of the schedule to the Arbitration Act, 1889 (*e*). The above provisions apply to all arbitrations, whether under section 23 of the Lands Clauses Act, 1845, or under section 68, when lands have been taken or injuriously affected (*f*). The right to costs, in an arbitration under the Public Health Act, 1875, in respect of lands taken compulsorily under the powers of that Act, is governed by the provisions of the Lands Clauses Acts (*g*), and not by the provisions of sections 179, 180 of the Public Health Act, 1875 (*h*).

Offer not admissible in evidence.

The offer on which the right to costs depends is not relevant or admissible in evidence in the arbitration (*i*).

When final offer may be made.

The final offer, which binds the company, and determines the claimant's right to costs, must be made before the arbitration

(*z*) *R. v. Manley Smith* (1893), 63 L. J. Q. B. 171.

(*a*) S. 23, L. Cl. Act, 1845; *Lind v. Isle of Wight Ferry Co.* (1862), 7 L. T. 416; *In re South Yorkshire, &c. Rail. Co., Ex parte Senior* (1849), 18 L. J. Q. B. 333.

(*b*) Cf. Book II., p. 326.

(*c*) The words "the arbitrators" include "the umpire": *Gould v. Staffordshire Potteries Waterworks Co.* (1850), 19 L. J. Ex. 281; and cf. *R. v. Manley Smith* (1893), 63 L. J. Q. B. 171.

(*d*) *Miles v. Great Western Rail. Co.*, [1896] 2 Q. B. 432; 65 L. J. Q. B. 649; *Riddell v. Lanarkshire, &c. Rail. Co.* (1904), 6 F. (Ct. of Sess.) 432.

(*e*) *Sidney v. North Eastern Rail. Co.*, [1916] 2 K. B. 760.

(*f*) *South Eastern Rail. Co. v. Richardson* (1852), 21 L. J. C. P. 122; cf. *R. v. Manley Smith* (1893), 63 L. J. Q. B. 171.

(*g*) *Ex parte Rayner* (1878), 3 Q. B. D. 446; 47 L. J. Q. B. 660.

(*h*) Cf. Book II., p. 339, and see p. 386 as to the Light Railways Act, 1906.

(*i*) *Gould v. Staffordshire Potteries Waterworks Co.* (1850), 19 L. J. Ex. 281, *per* Parke, B.

commences; that is, before the time when the last of the two arbitrators is appointed so as to enable the claimant to make up his mind before he has incurred any substantial expense whether or not he will accept it (*k*). The promoters have power to make amended offers of compensation, so long as the final offer is made before the commencement of the arbitration (*l*); but the offer must be for the amount of compensation only, and not for a sum including compensation and costs (*m*). In the case of *Fisher v. Great Western Rail. Co.* (*n*), Lord Alverstone, C. J., presiding, and Lord Justice Buckley in the Court of Appeal both expressed the opinion that the offer must be of a sum of money only, and must not include the execution of works. The offer in that case was in the following form, "on the understanding that such road will be made, we make you an offer of 50*l.*," and it was held that it was not a good offer under section 34 of the Lands Clauses Act, 1845, as it did not enable the claimant to judge what his position would be when he went to arbitration. If no offer is made (*o*), or if an offer made is withdrawn (*p*), the claimant is entitled to his costs. If the award made is not in respect of the same subject-matter as that in respect of which the offer was made, or the same state of things as that which existed at the date of the offer (*q*), the owner is entitled to his costs of the arbitration, although the sum awarded is less than the amount of the company's offer (*r*).

Amended
offers may be
made.

Contents
of offer.

Where an offer has been made by the promoters under section 38, and subsequently thereto notice is given of a desire to have the compensation settled by arbitration, such notice does not abrogate the offer, and if the sum offered is not less than that awarded the claimant must bear his own costs of the arbitration (*s*).

(*k*) *Fitzhardinge v. Gloucester, & Co. Canal Co.* (1872), L. R. 7 Q. B. 776; 41 L. J. Q. B. 316; *Gray v. North Eastern Rail. Co.* (1876), 1 Q. B. D. 696; 45 L. J. Q. B. 818; *Yates v. Mayor of Blackburn* (1860), 29 L. J. Ex. 447.

(*l*) *Hayward v. Metropolitan Rail. Co.* (1863), 33 L. J. Q. B. 73; *Fitzhardinge v. Gloucester, & Co. Canal Co.* (1872), L. R. 7 Q. B. 776; 41 L. J. Q. B. 316; *Fisher v. Great Western Rail. Co.*, [1911] 1 K. B. 551.

(*m*) *Balls v. Metropolitan Board of Works* (1866), L. R. 1 Q. B. 337; 35 L. J. Q. B. 101.

(*n*) [1911] 1 K. B. 551.

(*o*) *Martin v. Leicester Waterworks Co.* (1858), 27 L. J. Ex. 432.

(*p*) *Foster v. Sheffield Corporation* (1895), 72 L. T. 549.

(*q*) *Fisher v. Great Western Rail. Co.*, [1911] 1 K. B. 551.

(*r*) *Miles v. Great Western Rail. Co.*, [1896] 2 Q. B. 432; 65 L. J. Q. B. 649.

(*s*) *Lascelles v. Swansea School Board* (1900), 69 L. J. Q. B. 24.

When claims
are separable.

If an owner claims compensation for the value of lands, and also for injury done to his lands by the execution of the works, and the claims are clearly separable, and the umpire awards more than the amount offered as the value of the lands, but finds that no damage has been incurred through the alleged injury, then the right to costs, in respect of the claim for the value of the lands, and for the injury done to the lands, is distinguishable, and the umpire is justified in settling the costs incurred in the assessment of the value of the lands and refusing to settle the costs incurred by the owner in bringing forward the claim for the alleged injury (*t*).

It is not
necessary to
include costs
in award.

Section 34 of the Lands Clauses Act, 1845, provides that the amount of costs shall be settled by the arbitrators; and, in a reference under section 64, Mr. Justice Erle decided, that the power of the arbitrator to assess costs must be exercised in the award itself (*u*). This decision was dissented from in the Court of Exchequer, which held (*x*) that costs could be ascertained and settled subsequently to the award by the person or persons making the award: and that such settlement need not be within three months of the matters being referred to the person or persons making the award, and further that the arbitrators or umpire could be compelled by mandamus to settle the costs, in case of refusal or neglect to do so (*x*).

Taxation of
costs by a
master.

This question now depends on section 1 of the Lands Clauses Taxation of Costs Act, 1895 (*y*), which, so far as arbitrations are concerned, re-enacts the provisions of section 1 of the Lands Clauses Consolidation Act, 1869 (*z*). This later Act provides that the costs of and incidental to the arbitration and award shall, if either party so requires, be settled by any one of the taxing masters of the High Court of Justice. The Chancery taxing masters have now jurisdiction to tax the costs of an inquiry under the Lands Clauses Acts (*a*). This taxation must necessarily be subsequent to the award.

(*t*) *R. v. Biram* (1852), 17 Q. B. 969; *Sharpe v. Metropolitan District Rail. Co.* (1879), 4 Q. B. D. 645.

(*u*) *London and North Western Rail. Co. v. Quick* (1848), 18 L. J. Q. B. 89.

(*x*) *Gould v. Staffordshire Potteries Waterworks Co.* (1850), 19 L. J. Ex. 281.

(*y*) 58 Vict. c. 11.

(*z*) 32 & 33 Vict. c. 18.

(*a*) *Covington v. Metropolitan District Rail. Co.*, [1903] 1 K. B. 231; 72 L. J. K. B. 93.

The taxation of costs by a master cannot be reviewed by the Court because the reference is to him as a person designated by the statute (*b*); the similar section of the Act of 1869 has been held to be only applicable to arbitrations carried out under the statutory provisions of the Lands Clauses Act, 1845 (*c*). But taxation can be obtained in cases which come under the Solicitors Act, 1843 (*d*), s. 38 (*e*). To settle the question whether the master has power to tax the costs, an application for a mandamus to tax should be made (*f*). In all cases in which a taxation would be proper, a master is bound to tax; but the Court will not compel him to do so, where it is clearly of opinion that the owner is not entitled to costs, and that the taxation would be useless (*g*).

Taxation of master not subject to review by the Court.

Mandamus to tax.

The payment of costs, to which an owner is entitled in arbitration proceedings under the Lands Clauses Act, 1845, is enforceable by action, which can be maintained, although the amount has not been ascertained by taxation (*h*). An order for the taxation of costs made by a judge in an action for their recovery by the owner is a valid order (*h*). An action for payment of costs of an arbitration under section 34 of the Lands Clauses Act, 1845, can be maintained within a reasonable time of the making of the award, and the execution by the owner of a conveyance of the lands taken is not a condition precedent to the payment of such costs. The claim of an owner, who is acting *bonâ fide*, to the costs of an arbitration, does not depend on the validity of his title to the lands taken, and he is entitled to have and to keep such costs, whether

Action to enforce payment of costs.

(*b*) *Sandbach Charity Trustees v. North Staffordshire Rail. Co.* (1878), 3 Q. B. D. 1; 47 L. J. Q. B. 10; *Owen v. London and North Western Rail. Co.* (1867), L. R. 3 Q. B. 54; 37 L. J. Q. B. 35; *Earl of Shrewsbury v. Wirrall Railways Committee*, [1895] 2 Ch. 812; 64 L. J. Ch. 850; *Re Cannings, Ltd. and Middlesex C. C.*, [1907] 1 K. B. 51. Cf. *R. (War Secretary) v. Goff*, [1905] 2 Ir. R. 121.

(*c*) *Doulton v. Metropolitan Board of Works* (1870), L. R. 5 Q. B. 333; 39 L. J. Q. B. 165; *Wombwell v. Corporation of Barnsley* (1877), 36 L. T. 708.

(*d*) 6 & 7 Vict. c. 73.

(*e*) *Wombwell v. Corporation of Barnsley* (1877), 36 L. T. 708; *In re Collyer-Bristow & Co.*, [1901] 2 K. B. 839; 70 L. J. K. B. 941.

(*f*) Cf. *R. v. Manley Smith, In re Westfield and Metropolitan Rail. Cos.* (1883), 12 Q. B. D. 481; 53 L. J. Q. B. 115; *R. v. Manley Smith, In re Church and London School Board* (1892), 67 L. T. 197.

(*g*) *Fitzhardinge v. Gloucester, &c. Canal Co.* (1872), L. R. 7 Q. B. 776; 41 L. J. Q. B. 316.

(*h*) *Metropolitan District Rail. Co. v. Sharpe* (1880), 5 App. Cas. 425; 50 L. J. Q. B. 14; *Holdsworth v. Wilson* (1863), 32 L. J. Q. B. 289; cf. Book II., p. 327.

or not he can support the title which he claims (*i*). Costs, given in cases of an arbitration under section 68, would not necessarily follow the same rule as costs given under section 34 of the Lands Clauses Act, 1845. This point has not been directly decided, but the case of *Todd v. Metropolitan District Rail. Co.* (*k*) shows that an owner is not entitled to costs, where the verdict of a jury is set aside on the ground that the claimant has no right to compensation. The owner has no lien for costs over lands taken; but only for the amount of purchase-money (*l*). The question of the payment of costs, where the amount of compensation has been deposited in the bank, is considered in Chap. XVII. (*m*).

(*i*) *Capell v. Great Western Rail. Co.* (1883), 11 Q. B. D. 345; 52 L. J. Q. B. 348.

(*k*) (1871), 24 L. T. 435.

(*l*) *Ferrers v. Stafford and Uttoxeter Rail. Co.* (1872), L. R. 13 Eq. 524; 41 L. J. Ch. 362.

(*m*) *Post*, p. 274.

CHAPTER XII.

JURY.

THE amount of compensation is settled by a jury in the following cases :—

Assessment of compensation by a jury.

If, when lands are required or taken, the amount of compensation claimed or offered exceeds 50*l.*, and the interest of the owner is greater than that of a yearly tenant, or of a tenant from year to year, the claimant is entitled to have the assessment of a jury. The claimant can elect arbitration, should he so prefer; but if under an arbitration no final award is made within three months, or such further time as the parties may agree, the question of compensation will ultimately be settled by a jury (*a*).

When lands required or taken.

In many cases the promoters are, by their special Act, entitled to take part only of a house or other building or manufactory compulsorily, and provisions are made rendering the promoters liable for any damage sustained by reason of the severance of the part taken (*b*). Under Acts containing clauses of this kind, the question of compensation for the severance of the part may be settled by a jury or arbitrator (*c*).

In all cases in which lands have been only injuriously affected, and the amount claimed or offered exceeds 50*l.*, and the owner does not desire to have the same settled by arbitration, or no final award has been made, compensation is assessed by a jury, although the interest of the owner in such lands is not greater than that of a yearly tenant, or of a tenant from year to year (*d*). The jury cannot decide whether the lands have been injuriously affected, or

When lands injuriously affected.

(*a*) Ss. 23, 121, L. Cl. Act, 1845.

(*b*) *In re Gonty and Manchester, Sheffield and Lincolnshire Rail. Co.*, [1896] 2 Q. B. 439; 65 L. J. Q. B. 625; *Caledonian Rail. Co. v. Turcan*, [1898] A. C. 256; 67 L. J. P. C. 69; cf. Housing of the Working Classes Act, 1890, Sched. 2 (12) (*post*, pp. 358, 541).

(*c*) See *Morrison v. Great Eastern Rail. Co.* (1885), 53 L. T. 384.

(*d*) S. 23, L. Cl. Act, 1845; cf. *Read v. Victoria Station, &c. Rail. Co.* (1863), 32 L. J. Ex. 167.

any question as to the right to claim compensation, but only the amount of compensation payable on the hypothesis that they have been so affected, and that the claim is properly made (*e*).

The provisions of section 121 of the Lands Clauses Act, 1845, only come into effect where the owner is required to give up possession of lands, and do not apply where compensation is claimed for injury (*f*). Certain special Acts vary the general provisions contained in section 121 of the Lands Clauses Act, 1845, and give jurisdiction to two justices, in cases where the land of owners who have no greater interest than that of a yearly tenant, or of a tenant from year to year, has been injuriously affected (*g*).

All lands of owner within notice to treat.

Compensation for the interest of any one person in lands included in the same notice to treat must be determined by the same jury (*h*). Where a counter-notice is given requiring the promoters to take the whole of a house or other building or manufactory, the question before the jury is the compensation for the whole house, and not merely for the part included in the notice to treat (*i*). Where there are distinct interests in the lands included in the notice to treat, each owner is entitled to a separate inquiry (*k*). But where one person has several distinct interests in one property, or in several properties, included in one notice to treat, the inquiry is before one jury in one trial (*l*).

Owner cannot summon a jury.

When the question of compensation in respect of the value of lands, for which a notice to treat has been served, is to be settled by a jury, the power of issuing a warrant to the proper officer for the summoning of the jury is given only to the promoters, and the initiative cannot be taken by the owner. When a notice to treat has been given, and no further steps have been taken, an owner,

But is entitled to a mandamus to

(*e*) *R. v. Metropolitan Rail. Co., Ex parte Horrocks* (1863), 32 L. J. Q. B. 367; *R. v. London and North Western Rail. Co.* (1854), 23 L. J. Q. B. 185; *Read v. Victoria Station, &c. Rail. Co.* (1863), 32 L. J. Ex. 167.

(*f*) *R. v. Middlesex Sheriff, In re Somers and Metropolitan Rail. Co.* (1862), 31 L. J. Q. B. 261; *R. v. Stone* (1866), L. R. 1 Q. B. 529.

(*g*) Cf. 27 & 28 Vict. c. cccxxii. s. 84.

(*h*) *Ecclesiastical Commissioners v. Commissioners of Sewers* (1880), 14 Ch. D. 305; cf. *Stone v. Commercial Rail. Co.* (1839), 4 My. & Cr. 122; *Giles v. London, Chatham and Dover Rail. Co.* (1861), 5 L. T. 479.

(*i*) *Pinchin v. London and Blackwall Rail. Co.* (1854), 1 K. & J. 34; *Schwinge v. London and Blackwall Rail. Co.* (1855), 24 L. J. Ch. 405.

(*k*) *Abrahams v. Corporation of London* (1868), L. R. 6 Eq. 625, 635; 37 L. J. Ch. 732.

(*l*) *Starr v. London Corporation* (1869), L. R. 7 Eq. 236. This case turned to a certain extent on the provisions of a local Act.

after a reasonable time, and after notice to the promoters, is entitled to a mandamus ordering the promoters to issue their warrant for the summoning of a jury (*m*). Notice to the promoters' solicitors has been held sufficient to enable the landowner to apply for a writ of mandamus (*n*). An application for a prerogative writ of mandamus must be made in the King's Bench Division of the High Court of Justice (*o*). An action for a mandamus, and claiming damages for delay, has been maintainable since the Common Law Procedure Act, 1854 (*p*), and the action may lie even when no damage has been sustained (*q*). It is no defence to such an action, that the whole amount of capital has not been subscribed in accordance with section 16 of the Lands Clauses Act, 1845 (*r*), or that the period prescribed for the exercise of compulsory powers has elapsed (*s*), since a notice to treat is not necessarily an act in exercise of the compulsory powers for the taking of lands. Unless it is desired to claim a mandamus and damages for delay in the same action, the prerogative writ of mandamus is often the more convenient form of procedure (*t*). In the former case the mandamus could not issue before judgment, since there would be no ground on which to apply to a Court under section 25, sub-section 8, of the Judicature Act, 1873, for an interlocutory order.

compel promoters to do so.

(*m*) *R. v. Hungerford Market Co.* (1832), 4 B. & Ad. 327; *Fotherby v. Metropolitan Rail. Co.* (1867), L. R. 2 C. P. 188; 36 L. J. C. P. 88; *Morgan v. Metropolitan Rail. Co.* (1868), L. R. 4 C. P. 97; 38 L. J. C. P. 87; cf. *R. v. London Corporation* (1867), 16 L. T. 280; *Guest v. Poole, &c. Rail. Co.* (1870), L. R. 5 C. P. 553; 39 L. J. C. P. 329.

(*n*) *In re South Yorkshire, &c. Rail. Co., Ex parte Senior* (1849), 18 L. J. Q. B. 333.

(*o*) The procedure to be followed is to be found in Crown Office Rules, 1906, rr. 49—69.

(*p*) *Fotherby v. Metropolitan Rail. Co.* (1867), L. R. 2 C. P. 188; 36 L. J. C. P. 88; *Morgan v. Metropolitan Rail. Co.* (1868), L. R. 4 C. P. 97; 38 L. J. C. P. 87.

(*q*) *Fotherby v. Metropolitan Rail. Co.* (1867), L. R. 2 C. P. 188; 36 L. J. C. P. 88. As to the procedure in such cases, see R. S. C., O. LIII.

(*r*) *Guest v. Poole and Bournemouth Rail. Co.* (1870), L. R. 5 C. P. 553, 560; 39 L. J. C. P. 329; *In re Uxbridge and Rickmansworth Rail. Co.* (1890), 43 Ch. D. 536; 59 L. J. Ch. 409.

(*s*) *Birmingham and Oxford Junction Rail. Co. v. R.* (1851), 20 L. J. Q. B. 304.

(*t*) *R. v. London and North Western Rail. Co.*, [1894] 2 Q. B. 512; 63 L. J. Q. B. 695.

Promoters
liable to pay
claim if
jury not
summoned.

When lands have been entered upon or injuriously affected, the owner, although unable to issue a warrant for the summoning of a jury, is fully protected under section 68 of the Lands Clauses Act, 1845. He has simply to give notice of his desire to have the amount of compensation due to him settled by a jury, stating the nature of his interest and the amount claimed; and if the promoters do not enter into a written agreement to pay the amount claimed, or within twenty-one days issue their warrant for the summoning of a jury, he is entitled to the amount so claimed, and can recover the same by action. The effect of this section is, to compel the promoters to issue their warrant, subject to a liability to pay the whole amount claimed. The question of the right of an owner to compensation is left to be determined subsequently to the fixing of the amount (*u*), and can be raised as a defence to an action brought to enforce payment.

Injunction.

If promoters proceed to summon a jury without having complied with all necessary conditions precedent, an injunction may be obtained to restrain them (*x*).

Form of
warrant.

So far as the form of the warrant is concerned, it is sufficient that it should substantially comply with the provisions of the Lands Clauses Act, 1845, or of the special Act (*y*), in order that it may give jurisdiction, and no special form is necessary (*z*). If there is a variance in the description of the hereditaments between the notice to treat and the precept to the sheriff, this is an irregularity which can be waived (*a*). Where the promoters are not required by their special Act to take the whole of a house, the warrant should state that notice to take a part has been given, and that the owner has asserted that the part could not be taken without material detriment to the remainder. The jury will determine (1) whether the part can be severed without serious detriment to the rest; (2) if so, what compensation ought to be paid for the part taken, including damages for severance (*b*); and (3) if not, what compensation should be paid for the whole.

(*u*) *South Staffordshire Rail. Co. v. Hall* (1851), 20 L. J. Ch. 397; *East and West India Dock Co. v. Gatlke* (1851), 20 L. J. Ch. 217. *Vide post*, p. 225.

(*x*) *Schwinge v. London and Blackwall Rail. Co.* (1855), 24 L. J. Ch. 405; *Wood v. North Staffordshire Rail. Co.* (1849), 3 De G. & Sm. 368; *Spencer v. Metropolitan Board of Works* (1882), 22 Ch. D. 142; 52 L. J. Ch. 249.

(*y*) *Stone v. Commercial Rail. Co.* (1839), 4 Myl. & Cr. 122.

(*z*) *R. v. Lancaster and Preston Junction Rail. Co.* (1845), 14 L. J. Q. B. 84.

(*a*) *In re Crawshaw Bailey* (1852), Bail Ct. Cas. 66.

(*b*) *Morrison v. Great Eastern Rail. Co.* (1885), 53 L. T. 384.

Under section 21 of the Lands Clauses Act, 1845, the owner is given twenty-one days after the service of a notice to treat, for the purpose of negotiation and of entering into an agreement, if possible, with the promoters. When a counter-notice is given by the owner under section 92 of the Lands Clauses Act, 1845, a second formal notice by the promoters under section 18 is not requisite, and the twenty-one days mentioned in section 21 are not applicable; but an owner is entitled to a reasonable opportunity of agreeing with the promoters before they proceed to summon a jury (c).

Owner is given twenty-one days after service of notice to treat.

Before issuing their warrant for summoning a jury to assess the value of lands required by them for the purposes of their undertaking, the promoters are required to give the owner not less than ten days' notice, and to state in such notice the amount of compensation they are willing to offer (d). This provision does not apply where lands have been already taken or injuriously affected, and the owner gives notice under section 68 of the Lands Clauses Act, 1845, of his desire to have the amount of compensation settled by a jury (e). Lands are not taken within the meaning of section 68 unless they are physically taken (f). The promoters are not precluded from making a second and amended offer of a larger amount of compensation to an owner, where the amount is determined by a jury (g); but how far this may affect the question of costs will be subsequently considered (h).

Notice to owner before issuing warrant.

The promoters issue their warrant under their common seal, or, if they are not a corporation, under the hands and seals of the promoters, or of any two of them, to the sheriff, or, if the sheriff is interested, to a coroner of the county where the lands in question are situate, or, if all the coroners are interested, to an ex-sheriff or ex-coroner, requiring him to summon a jury (i). By the inter-

How warrant to be attested, and to whom issued.

(c) *Schwinge v. London and Blackwall Rail. Co.* (1855), 24 L. J. Ch. 404, 415.

(d) S. 38, L. Cl. Act, 1845.

(e) *Railstone v. York, &c. Rail. Co.* (1850), 19 L. J. Q. B. 464; *Metropolitan Rail. Co. v. Turnham* (1863), 32 L. J. M. C. 249; *Hayward v. Metropolitan Rail. Co.* (1863), 33 L. J. Q. B. 73. *Richardson v. South Eastern Rail. Co.* (1852), 21 L. J. C. P. 122, *contra*, has not been followed on this point.

(f) *Burkinshaw v. Birmingham, &c. Rail. Co.* (1850), 20 L. J. Ex. 246; *R. v. Manley Smith, In re Church and London School Board* (1892), 67 L. T. 197.

(g) *Hayward v. Metropolitan Rail. Co.* (1863), 33 L. J. Q. B. 73.

(h) *Post*, p. 216.

(i) S. 39, L. Cl. Act, 1845.

Sheriff.

pretation clause of the Lands Clauses Act, 1845 (s. 3), the word "sheriff" is defined to include under-sheriff or other legally competent deputy, and to mean the sheriff of the county, city, borough, liberty, cinque port, or place where the lands in question are situate; and if such lands, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port, or place, the word "sheriff" is to be construed to mean the sheriff of any county, &c., where any part of such lands are situate (*k*). In the city of Westminster the high bailiff is substituted for the sheriff (*l*). The inquiry is properly held before the sheriff of the place where the lands are, even when the works by which the lands are injuriously affected are not within the jurisdiction of the same sheriff (*m*). The interpretation clause is governed by the words "unless there be something either in the subject or context repugnant to such construction," and if the sheriff is interested the promoters should not issue their warrant to an under-sheriff, but to the coroner (*n*). The coroner has in all respects the same powers as a sheriff, if the warrant for summoning a jury is issued to him (*o*).

Coroner.

Sheriff not to be interested.

The provision that the sheriff, or other officer to whom the warrant for summoning a jury is issued, shall not be interested in the matter in dispute, is a declaration of the common law principle, that no one shall be a judge in his own case (*p*), and can be waived by consent (*q*). Holding shares in the promoting company (*r*) or being a ratepayer in the district in which the compensation will be levied (*s*) constitutes the sheriff an interested party. If a party appears and conducts his case without knowing that the sheriff is interested, he does not waive his right to make a subsequent objection, and is entitled to a *certiorari* to quash the

(*k*) Cf. *In re Cooling and Great Northern Rail. Co.* (1849), 14 Q. B. 25.

(*l*) L. Cl. Act, 1869, s. 3.

(*m*) *R. v. Great Northern Rail. Co.* (1849), 19 L. J. Q. B. 25.

(*n*) *Worsley v. South Devon Rail. Co.* (1851), 20 L. J. Q. B. 254. Cf. *R. v. London and North Western Rail. Co.* (1863), 9 L. T. 423.

(*o*) S. 40, L. Cl. Act, 1845.

(*p*) *R. v. Sheriff of Warwickshire* (1854), 3 W. R. 164; *Ex parte Baddeley* (1848), 5 D. & L. 575.

(*q*) Cf. *Corrigal v. London and Blackwall Rail. Co.* (1843), 12 L. J. C. P. 209; *Ex parte Baddeley* (1848), 5 D. & L. 575.

(*r*) *R. v. London and North Western Rail. Co.* (1863), 9 L. T. 423; cf. *Ex parte Baddeley* (1848), 5 D. & L. 575.

(*s*) *R. v. Sheriff of Warwickshire* (1854), 3 W. R. 164.

inquisition (*t*). Where the sheriff is a shareholder in the promoters' undertaking, it would seem doubtful whether, if they issue their warrant to him, they can subsequently impugn the validity of the inquisition on the ground of such interest (*u*).

In *R. v. Manchester, Sheffield and Lincolnshire Rail. Co.* (*x*), the railway company issued their warrant to a sheriff who was a shareholder in another railway company, with which they had parliamentary powers to agree for an amalgamation; but no such agreement had been carried out. The jury were summoned by the under-sheriff, and the inquiry was held before a legal assessor. It was decided that the interest of the sheriff was contingent and remote, and that he was not interested in the matter in dispute so as to be disqualified under section 39 of the Lands Clauses Act, 1845. The promoters may properly issue their warrant to the sheriff of a county where the under-sheriff is interested, and it rests with the sheriff to appoint some qualified deputy, or to hold the inquisition himself (*y*). In the event of all persons to whom a warrant could be issued being interested no form of procedure is provided; but such a contingency is not likely to occur.

If a sheriff, to whom a warrant is properly issued, neglects or refuses to summon a jury to meet at a convenient time and place, distant not more than eight miles from the lands in question, and not more than twenty-one nor less than fourteen days after the receipt of the warrant (*z*), a mandamus compelling him to do so will be granted (*a*). There is no power to postpone without consent (*b*). When the verdict of a jury has been set aside by the order of a superior Court, the sheriff has authority, and can be compelled, to proceed under the original warrant, which, after the setting aside of the verdict, is unexecuted (*c*).

**Mandamus
to sheriff to
summon jury.**

The number of jurymen to be summoned is twenty-four, and out of these twelve persons are to be drawn by the sheriff, and all

**Summoning
of jury.**

(*t*) *R. v. Sheriff of Warwickshire* (1854), 3 W. R. 164.

(*u*) *Cf. Corrigan v. London and Blackwall Rail. Co.* (1843), 12 L. J. C. P. 209.

(*x*) (1867), L. R. 2 Q. B. 336; 36 L. J. Q. B. 171.

(*y*) *Worsley v. South Devon Rail. Co.* (1851), 20 L. J. Q. B. 254.

(*z*) L. Cl. Act, 1845, s. 41.

(*a*) *R. v. Sheriff of Middlesex, Re Walker and London and Blackwall Rail. Co.* (1842), 3 Q. B. 744.

(*b*) *Galloway v. Mayor, &c. of London* (1866), 12 Jur. N. S. 182.

(*c*) *Horrocks v. Metropolitan Rail. Co.* (1865), 19 C. B. N. S. 139; *Tanner v. Swindon, &c. Rail. Co.* (1881), 45 L. T. 209.

parties concerned are to have their lawful challenges against any of the jurymen; but no such party can challenge the array (*cc*). If there is not a full jury, the parties may agree to try the question of compensation before the jurymen who are in fact present (*d*).

Remedy if juryman is not qualified.

If jurymen are not qualified to act, the remedy of the parties is by challenge, and an inquisition will not subsequently be set aside on this ground (*e*). But the verdict of a jury will be set aside on the ground of treating, as where the claimant gave the jury a champagne luncheon (*f*).

Jury may view lands.

At the request of either party, the sheriff must order the jury, or any six or more of them, to view the place or matter in controversy (*g*).

Penalties for default of jurymen.

The jury are sworn (*h*), and if a juryman does not appear, or on appearance refuses to be sworn, or in any other manner unlawfully neglects his duty, he shall forfeit a sum not exceeding 10*l.*, unless he show reasonable excuse to the satisfaction of the sheriff; and the jurymen are also in addition subject to the same regulations, pains, and penalties, as if the jury had been returned for the trial of an issue in the High Court (*i*).

Special jury.

If either party desire a special jury, the question of compensation is to be tried before a special jury; but the claimant for compensation must give notice of such desire before the issuing of their warrant to the sheriff by the promoters. The giving of such notice does not act as a waiver or withdrawal of a prior notice under section 68 nor extend the time of the promoters for issuing their warrant for summoning a jury (*k*).

Nomination of special jury.

The sheriff summons both parties before him for the purpose of nominating a special jury, and not later than eight days after such nomination, the sheriff appoints a day, and gives to the parties four days' notice, for the purpose of reducing to twenty the number of the said special jury. The number of special jurymen to try

(*cc*) S. 42.

(*d*) *Ex parte Great Western Rail. Co., In re Sheriff of Gloucester* (1851), 18 L. T. O. S. 92.

(*e*) *In re Chelsea Waterworks Co., Ex parte Phillips* (1855), 24 L. J. Ex. 79. Cf. *Cooling v. Great Northern Rail. Co.* (1850), 19 L. J. Q. B. 529.

(*f*) *Tonner v. Swindon, &c. Rail. Co.* (1881), 45 L. T. 209. Cf. *Re Maunder* (1883), 49 L. T. 535.

(*g*) L. Cl. Act, 1845, s. 43.

(*h*) S. 48.

(*i*) S. 44.

(*k*) *Glyn v. Aberdare Rail. Co.* (1859), 28 L. J. C. P. 271.

any question of compensation is twelve ; and if there is not a full jury, the sheriff, at the request of either party, adds to the list of the jury the names of other disinterested persons qualified to act as common or special jurymen, and against such persons all parties have their lawful challenges (*l*).

If the parties agree, any inquiry other than that for the trial of which the special jury has been struck, may be tried by such jury (*m*). Other inquiries before special jury.

No jurymen, without his consent, can be summoned to attend an inquiry for the purpose of assessing compensation more than once in any year (*n*).

The promoters must give to the owner not less than ten days' notice in writing of the time and place of the inquiry. If the owner does not appear at the time appointed, such inquiry is not further to be proceeded in, but the compensation is assessed by a surveyor appointed by two justices under ss. 59—63 (*o*). If the company against whom the claim is made do not appear, the jury should be sworn and assess the amount in the same way as when a defendant in an action fails to appear (*p*). Notice of time and place of inquiry.
Failure of parties to appear.

The sheriff presides at the inquiry, and the claimant in matters of procedure has the same rights and privileges as the plaintiff in an ordinary action (*p*). These words refer to the conduct of proceedings and the right to begin, and have no reference to costs (*q*). Procedure.

The sheriff must at the request of either party summon any witness (*p*). If a witness, duly summoned, and to whom a tender of reasonable compensation has been made, fails to appear, or refuses to be examined on oath, he forfeits to the party aggrieved a sum not exceeding 10*l*. (*r*). Witnesses.

If the sheriff make default in any of the matters required to be done by him, in relation to any such trial or inquiry, he forfeits 50*l*., recoverable by the promoters by action in the High Court (*s*). Any penalty payable by the sheriff or a jurymen is applied in satisfaction of the costs of the inquiry, so far as the same will extend (*s*). Default of sheriff.

(*l*) L. Cl. Act, 1845, ss. 54, 55.

(*m*) S. 56.

(*n*) S. 57.

(*o*) Ss. 46, 47.

(*p*) S. 43.

(*q*) *R. v. Gardner* (1837), 6 A. & E. 112; cf. *R. v. Sheriff of Warwickshire* (1841), 2 Rail. Cas. 661.

(*r*) S. 45.

(*s*) S. 44.

Form of
inquisition.

If all preliminary steps necessary to give jurisdiction have in fact been taken, and the jurisdiction substantially appears on, or may be inferred from, the inquisition read in conjunction with the warrant issued to the sheriff, an objection to the form of the inquisition will not be entertained (*t*). An inquisition is sufficient, although it does not on the face of the document contain a direct allegation that the parties have disagreed as to the amount of compensation, or that the notice of proceedings before the jury has been given in conformity with the statutory requirements (*u*). It is not necessary that the warrant and inquisition should refer to the notice to treat, or give particulars of the lands required (*x*), provided there is no question as to the identity of the lands in respect of which compensation has been assessed. The inquisition need not state that the capital has been subscribed, so as to authorize the exercise of compulsory powers (*y*).

Judgment to
be given by
sheriff and to
be signed and
recorded.

The sheriff, before whom the inquiry is held, gives judgment for the purchase-money or compensation assessed by a jury, and the verdict and judgment are signed by the sheriff, and kept by the clerk of the peace among the records of the general or quarter sessions. Such verdicts and judgments are deemed records, and copies thereof, signed and certified by the clerk of the peace, are made good evidence (*z*). Although the inquisition is held before the under-sheriff, it should be signed in the name of the sheriff (*a*); and if the inquisition has not been duly recorded, parol evidence may be given of the finding of the jury (*b*).

Validity of
inquisition.

If an objection is raised to the validity of an inquisition on the ground of want or excess of jurisdiction, the proper course is to apply for a *certiorari* (*c*), and not for a prohibition against the sheriff, to prevent him from recording the judgment and ver-

(*t*) *Taylor v. Clemson* (1842), 2 Q. B. 978; *Ostler v. Cooke* (1849), 18 L. J. Q. B. 185.

(*u*) *Taylor v. Clemson* (1842), 2 Q. B. 978.

(*x*) *Ostler v. Cooke* (1849), 18 L. J. Q. B. 185.

(*y*) *Doe d. Payne v. Bristol and Exeter Rail. Co.* (1840), 6 M. & W. 320.

(*z*) *Chabot v. Lord Morpeth* (1850), 19 L. J. Q. B. 377.

(*a*) *R. v. Perkin* (1845), 7 Q. B. 165; *Stroud v. Watts* (1846), 3 D. & L. 799.

(*b*) *Manning v. Eastern Counties Rail. Co.* (1844), 13 L. J. Ex. 265.

(*c*) Cf. *South Wales Rail. Co. v. Richards* (*R. v. South Wales Rail. Co.*) (1849), 18 L. J. Q. B. 310; *R. v. London and North Western Rail. Co.* (1854), 23 L. J. Q. B. 185; *In re Penny and South Eastern Rail. Co.* (1857), 26 L. J. Q. B. 225; *Streatham, &c. Estates Co. v. Public Works Commissioners* (1888), 52 J. P. 615.

dict (*d*) ; but *certiorari* is not granted for an irregularity which does not amount to a want of jurisdiction (*e*).

The High Court will not quash an inquisition of a jury on the ground that the interest of the person claiming compensation turns out, upon the inquiry before the jury, to be a monthly tenancy instead of a lease. The validity of the inquisition may be questioned in an action brought for the amount awarded ; and it would seem that notice should in such a case be given to the taxing officer not to tax the costs of the inquiry (*f*).

If the verdict of the jury is given for a greater sum than has previously been offered by the promoters, all the costs of the inquiry are borne by the promoters (*g*). If the verdict is given for the same or a less sum, or no verdict is given because the owner fails to appear, each party pays his own costs ; and half the formal costs (*h*) of summoning, impannelling and returning the jury, and, if necessary, of taking the inquiry and recording the verdict and judgment thereof, are paid by each party (*i*). This provision applies to all inquiries held before a jury, whether lands are required to be taken, or have already been taken or injuriously affected (*k*), but it does not apply if under section 94 (*l*) the jury find the land of less value than the cost of the communications (*m*).

Costs of an inquiry before a jury.

If the inquiry before a jury is for the purpose of assessing the value of lands required to be taken, then, under section 38 of the Lands Clauses Act, 1845, a ten days' notice of their intention to cause a jury to be summoned is to be given to the owner by the promoters, and such notice is to state the sum of money the promoters are willing to give for the interest in such lands sought to be purchased by them from such owner. The words "the sum previously offered," in section 51 of the Lands Clauses Act, 1845, refer to the sum which, under section 38, the promoters state they

Time for previous offer if lands are required.

(*d*) *Chabot v. Lord Morpeth* (1850), 19 L. J. Q. B. 377.

(*e*) *Ex parte Great Western Rail. Co., In re Sheriff of Gloucester* (1851), 18 L. T. O. S. 92.

(*f*) *Ex parte School Board for London* (1892), *The Times*, 1 March, 1892.

(*g*) As to "offer," see *ante*, p. 200.

(*h*) *Bray v. South Eastern Rail. Co.* (1850), 19 L. J. Q. B. 11.

(*i*) S. 51, L. Cl. Act, 1845.

(*k*) *Hayward v. Metropolitan Rail. Co.* (1863), 4 B. & S. 787; *South Eastern Rail. Co. v. Richardson* (1852), 21 L. J. C. P. 122.

(*l*) *Vide ante*, p. 34.

(*m*) *Cobb v. Mid Wales Rail. Co.* (1866), L. R. 1 Q. B. 342; 35 L. J. Q. B. 117.

are willing to give, and the question of costs is determined in reference to the sum stated in such notice (*n*).

If lands taken or injured.

If the inquiry before a jury is for the purpose of assessing the value of lands already taken, or the injury done to lands through the construction of the authorized works under section 68 of the Lands Clauses Act, 1845, the provisions of section 38 do not apply (*o*). In this case the sum previously offered means a sum offered a "reasonable time previously;" and it is a "reasonable time previously," if the offer is made when promoters give the ten days' notice of inquiry to the owner required by section 46 of the Lands Clauses Act, 1845, provided that the owner has up to such time incurred no expenses in reference to the inquiry (*p*).

Offer may be amended.

The sum stated in the notice given under section 38 of the Lands Clauses Act, 1845, cannot be amended so as to influence the question of costs; but up to such time the promoters have full power to amend their offer; and it is no objection that, in the first instance, they offered a smaller sum (*q*).

Must be unconditional.

The offer must be unconditional, and it is void if made to include the amount of compensation and costs which may so far have been incurred (*r*).

Amount of offer not admissible in evidence.

The amount of an offer is not relevant or admissible evidence in an inquiry before a jury, the same principle applying as in the case of arbitrations (*s*).

Aggregate sum found by jury is the test.

If the jury assess the amount payable to an owner, whose lands have been injuriously affected, under separate heads, for the convenience of the parties, their verdict is still for the aggregate sum, and if this is not greater than the aggregate sum previously offered,

(*n*) *Pearson v. Great Northern Rail. Co.* (1869), L. R. 7 Q. B. 785 (n.); 18 W. R. 259; *R. v. Manley Smith, In re Westfield and Metropolitan Rail. Cos.* (1883), 12 Q. B. D. 481; 53 L. J. Q. B. 115; *R. v. Manley Smith, In re Church and London School Board* (1892), 67 L. T. 197.

(*o*) *Railstone v. York, &c. Rail. Co.* (1850), 19 L. J. Q. B. 464; *contra, Richardson v. South Eastern Rail. Co.* (1851), 20 L. J. C. P. 236; but see *S. C.* in Exch. Ch., 21 L. J. C. P. 122.

(*p*) *Turnham v. Metropolitan Rail. Co.* (1863), 32 L. J. M. C. 249; *Hayward v. Metropolitan Rail. Co.* (1863), 33 L. J. Q. B. 73; *Balls v. Metropolitan Board of Works* (1866), L. R. 1 Q. B. 337; 35 L. J. Q. B. 101.

(*q*) *Hayward v. Metropolitan Rail. Co.* (1863), 33 L. J. Q. B. 73; *R. v. Manley Smith, In re Westfield and Metropolitan Rail. Cos.* (1883), 12 Q. B. D. 481; 53 L. J. Q. B. 115.

(*r*) *Balls v. Metropolitan Board of Works* (1866), L. R. 1 Q. B. 337; 35 L. J. Q. B. 101. Cf. *ante*, p. 201.

(*s*) *Gould v. Staffordshire Potteries Waterworks Co.* (1850), 19 L. J. Ex. 281.

the owner is not entitled to his costs (*t*). This principle would not apply to an assessment made in part for the value of lands, and in part for injury done to lands, when the two amounts are separately found (*u*).

Where the promoters have given notice under section 38 of their intention to summon a jury, and have therein stated their offer for purchase-money and compensation, the claimant is entitled at any time before the verdict is given to accept such offer, and the jury should be directed to return a verdict for that amount (*x*).

Offer may be accepted at any time before verdict.

A verdict is not impeachable on the ground that the jury in the aggregate or as regards individual items have given their verdict for an amount greater than the amount claimed (*y*).

Verdict not limited to amount claimed.

If the verdict of a jury under section 68 of the Lands Clauses Act, 1845, is given for a greater amount than the sum previously offered, but is subsequently set aside on the ground that the claimant has no right to compensation, the owner is not entitled to the costs of the inquisition (*z*). But where a jury is summoned, at the instance of the promoters, for ascertaining the value of lands required to be taken, the right to costs depends upon section 51 of the Lands Clauses Act, 1845, which is very similar in terms to section 34. It has been held that the owner has, under section 34, a right to his costs, so long as he acts *bonâ fide*, whether or not he can support the title to the interest in lands in respect of which he has claimed compensation (*a*). Where an inquisition had been quashed, and a second held under the same warrant, and the amount awarded exceeded the amount previously offered, the owner was held entitled to the costs of both inquisitions (*b*).

Costs not payable if verdict set aside.

The costs of an inquiry before a jury are to be settled by one of the taxing masters of the Supreme Court on the application of either party, and include all reasonable costs, charges and expenses incurred in summoning, impannelling and returning the jury,

Costs to be settled by a master.

(*t*) *Hayward v. Metropolitan Rail. Co.* (1863), 33 L. J. Q. B. 73.

(*u*) *R. v. Biram* (1852), 17 Q. B. 969.

(*x*) *R. v. Westminster High Bailiff, Ex parte London County Council*, [1903] 2 K. B. 189; 72 L. J. K. B. 600.

(*y*) *Robertson v. City and South London Rail. Co.* (1904), 68 J. P. 280.

(*z*) *Todd v. Metropolitan District Rail. Co.* (1871), 24 L. T. 435. Cf. *Sharpe v. Metropolitan District Rail. Co.* (1879), 4 Q. B. D. 645, 652, 656.

(*a*) *Capell v. Great Western Rail. Co.* (1883), 11 Q. B. D. 345; 52 L. J. Q. B. 348.

(*b*) *R. v. North London Rail. Co.* (1882), 51 L. J. Q. B. 241; *S. C.*, *sub nom. R. v. Manley Smith*, 30 W. R. 272 (not following *R. v. Middlesex Sheriff, Re Walker and London and Blackwall Rail. Co.* (1842), 7 Jur. 1154).

taking the inquiry, the attendance of witnesses, the employment of counsel and attorneys, recording the verdict and judgment thereon and otherwise incident to such inquiry (*c*). By virtue of the General Rules of 1902 made pursuant to the Supreme Court of Judicature (Officers) Act, 1879, the Chancery taxing masters have now power to tax the costs of such inquiry (*d*).

Master's
decision not
open to
review.

The decision of a master in the taxation of costs is final, and the Court has no jurisdiction over the master's taxation on a motion to review (*e*). A mandamus ordering a master to tax might in proper cases be granted by the Court (*f*); but the more convenient remedy for an owner is to bring an action for the amount of costs to be taxed, and for an order that the taxation shall be made. This action is maintainable before a taxation has been made; and the promoters can raise by way of defence any objection to the validity of the owner's claim to costs (*g*). If costs have been improperly taxed by a master, the promoters have a sufficient remedy, and can raise the question of their liability when an action is brought for payment of the amount (*g*).

Right to costs
can be ques-
tioned in
action for
amount.

Costs recover-
able by dis-
tress warrant.

By section 53 of the Lands Clauses Act, 1845, it is enacted that costs payable to the owner, if not paid within seven days after demand, are recoverable from the promoters (and failing them from the treasurer of the promoters (*h*)), by a distress warrant, issued by a justice. It is submitted that, if there is a *bonâ fide* dispute as to the liability to pay costs, a distress warrant should not be issued until the question has been decided by the High Court, and the procedure adopted in an early case (*i*) is not con-

(*c*) S. 52, L. Cl. Act, 1845, as amended by Lands Clauses (Taxation of Costs) Act, 1895.

(*d*) *Covington v. Metropolitan District Rail. Co.*, [1903] 1 K. B. 231; 72 L. J. K. B. 93.

(*e*) *Owen v. London and North Western Rail. Co.* (1868), L. R. 3 Q. B. 54; 37 L. J. Q. B. 35; *Ross v. York, &c. Rail. Co.* (1849), 18 L. J. Q. B. 199; *Tennant v. Borough of Belfast* (1847), 11 Ir. L. R. 290; *Sandbach Charity Trustees v. North Staffordshire Rail. Co.* (1878), 3 Q. B. D. 1; 47 L. J. Q. B. 10; *R. (War Secretary) v. Goff*, [1905] 2 Ir. R. 121.

(*f*) Cf. *R. v. Manley Smith, In re Westfield and Metropolitan Rail. Cos.* (1883), 12 Q. B. D. 481; 53 L. J. Q. B. 115; *R. v. Manley Smith, In re Church and School Board for London* (1892), 67 L. T. 197.

(*g*) *Metropolitan District Rail. Co. v. Sharpe* (1880), 5 App. Cas. 425; *South Eastern Rail. Co. v. Richardson* (1852), 21 L. J. C. P. 122. Cf. *Ex parte London School Board* (1892), *The Times*, March 1, 1892; *R. (War Secretary) v. Goff*, [1905] 2 Ir. R. 121.

(*h*) S. 140, L. Cl. Act, 1845.

(*i*) *Metropolitan Rail. Co. v. Turnham* (1863), 32 L. J. M. C. 249.

venient. Under the same section the promoters may deduct any costs payable by the owner from the amount awarded by the jury.

In the case of railway companies, the Regulation of Railways Act, 1868 (*k*), contains provisions under which the question of compensation can be tried in the same manner as an ordinary action, but the procedure has not been extensively adopted in practice.

Railway company may apply to judge to hear cases of compensation.

Section 41 provides that, whenever in the case of any lands purchased or taken otherwise than by agreement, for the purposes of any public railway, any question of compensation in respect thereof, or any question of compensation in respect of lands injuriously affected by the execution of the works of any public railway, is, under the provisions of the Lands Clauses Act, 1845, to be settled by the verdict of a jury impanelled and summoned as in that Act mentioned, the company or party entitled to the compensation may, at any time before the issuing by the company [of their warrant (*l*)] to the sheriff as by that Act directed, apply to a judge of the High Court of Justice, who shall, if he think fit, make an order for trial of the question in one of the superior Courts, upon such terms and in such manner as to him shall seem fit (*m*); and the question between the parties is stated in an issue to be settled, in case of difference by the judge, or as he shall direct, and such issue may be entered for trial and tried accordingly, in the same manner as any issue joined in an ordinary action, at such place as the judge shall direct. "The question between the parties" means the question of compensation only, and does not include the question of liability (*n*). The proceedings in respect of such issue are under, and subject to the control and jurisdiction of, the Court as in ordinary actions therein, but so nevertheless that the jury shall, where the issue relates to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to lands held therewith, deliver their verdict separately in manner provided by section 49 of the Lands Clauses Act, 1845. An application under this section must be made before the issuing by the company of their warrant to a sheriff, or before the amount of com-

(*k*) 31 & 32 Vict. c. 119, ss. 41—43.

(*l*) *Seemle*, the words "of their warrant" are omitted through mistake: *Tanner v. Swindon, &c. Rail. Co.* (1881), 45 L. T. 209.

(*m*) This jurisdiction may be exercised by a master under R. S. C., O. LIV. r. 12; *In re Donisthorpe and Manchester, Sheffield and Lincolnshire Rail. Co.*, [1897] 1 Q. B. 671; 66 L. J. Q. B. 399.

(*n*) *In re East London Rail. Co., Oliver's Claim* (1890), 24 Q. B. D. 507.

compensation has been fixed under section 68, through the neglect of the company to issue their warrant within the prescribed time. The date of the application is not when a summons is taken out, but when it is made returnable (*o*). In an appeal from an order of the master to the judge or Court, the time when the master's order was made must be taken as determining the question of jurisdiction (*p*). The High Court has no power under this enactment to direct the trial to be before a judge alone (*q*). An appeal on an order under this section is not a matter of practice or procedure within the meaning of section 1, sub-section 4, of the Supreme Court of Judicature (Procedure) Act, 1894, and an appeal from such order lies to the Divisional Court (*r*).

Judge's order is equivalent to issue of warrant.

By section 42, whenever a company is called upon, or liable under the provisions of the Lands Clauses Act, 1845, to issue their warrant to the sheriff in the case of any disputed compensation, and the company obtain a judge's order as in the last preceding section mentioned, the obtaining of such an order and notice thereof to the opposite party is a satisfaction of the company's duty in respect of the issue of the warrant.

Effect of verdict of jury and of judgment of Court.

By section 43, the verdict of the jury and judgment of the Court upon any issue authorized by the Act, as regards costs, and every other matter incident to or consequent thereon, has the same operation and is entitled to the same effect as if that verdict and judgment had been the verdict of a jury and judgment of a sheriff, upon an inquiry conducted upon a warrant to the sheriff, issued by the company under the Lands Clauses Act, 1845. The verdict of the jury is final, and the Court cannot order a new trial (*s*). Where a judge on the trial of the issue held that the plaintiffs were not entitled to compensation, and gave judgment for the defendants, the Court of Appeal entertained an appeal by the plaintiffs and confirmed the decision of the judge (*t*).

(*o*) *Tanner v. Swindon, &c. Rail. Co.* (1881), 45 L. T. 209; *Bell v. North Staffordshire Rail. Co.* (1879), 4 Q. B. D. 205; 48 L. J. Q. B. 518.

(*p*) *In re Donisthorpe and Manchester, Sheffield and Lincolnshire Rail. Co.*, [1897] 1 Q. B. 671; 66 L. J. Q. B. 399.

(*q*) *In re East London Rail. Co., Oliver's Claim* (1890), 24 Q. B. D. 507.

(*r*) *Long v. Great Northern and City Rail. Co.*, [1902] 1 K. B. 813; 71 L. J. K. B. 598.

(*s*) *Birmingham and District Land Co. v. London and North Western Rail. Co.* (1889), 22 Q. B. D. 435.

(*t*) *New River Co. v. Midland Rail. Co.* (1877), 36 L. T. 539.

CHAPTER XIII.

JURISDICTION OF ASSESSING TRIBUNALS.

THE question to be submitted, under the Lands Clauses Acts, to the assessing tribunal, whether surveyors, justices, arbitrators, or a jury, and which it has jurisdiction to determine, is the purchase-money for lands required or taken by the promoters, or the amount in money which will compensate an owner for injuries done to his interest in lands (*a*). The principles in reference to which the amount of purchase-money or compensation should be assessed have already been dealt with (*b*).

Question for assessing tribunal.

Some special Acts contain provisions extending the jurisdiction of the assessing tribunal to other questions. Where the undertakers are authorized by the special Act to take part only of a house, the assessing tribunal is in some cases authorized to inquire whether the part can be severed without material detriment to the whole, and, if so, the amount of compensation to be paid, including damages for severance (*c*).

Provisions of special Acts. Where promoters authorized to take part only of a house.

In considering whether part of a property can be taken without material detriment to the remainder, the tribunal should take into consideration all the circumstances of the case, including the sufficiency of a proposed new access by granting a right of way over the lands of the promoters, where such grant is not inconsistent with the purposes for which the lands have been taken, and the promoters have power to make it (*d*). In Scottish arbitra-

(*a*) *R. v. London and North Western Rail. Co.* (1854), 23 L. J. Q. B. 185; *Re Newbold and Metropolitan Rail. Co.* (1863), 14 C. B. N. S. 405; *Brandon v. Brandon* (1864), 34 L. J. Ch. 333; *Brierley Hill Local Board v. Pearsall* (1884), 9 App. Cas. 595; 54 L. J. Q. B. 25; *Gough v. Liverpool Corporation* (1892), 8 Times L. R. 247, 323. Cf. *Bogg v. Midland Rail. Co.* (1867), L. R. 4 Eq. 310; 36 L. J. Ch. 440.

(*b*) *Ante*, pp. 107 *et seqq.*

(*c*) *Morrison v. Great Eastern Rail. Co.* (1885), 53 L. T. 384. Cf. Housing of the Working Classes Act, 1890, Sched. II. (12), *post*, pp. 358, 541.

(*d*) *In re Gonty and Manchester, Sheffield and Lincolnshire Rail. Co.*, [1896] 2 Q. B. 439; 65 L. J. Q. B. 625.

tions the arbitrator is not liable to have his decision reviewed, unless he is guilty of misconduct in his office or exceeds the bounds of his jurisdiction, and whether he be right or wrong in declining to take an offer by the company into consideration in determining whether a portion of the property can be severed without material detriment to the remainder, his award is binding and conclusive (e).

Title not within their jurisdiction.

Questions of title are not within the jurisdiction of the assessing tribunal, and the validity of a title claimed cannot be disputed in proceedings taken for the assessment of compensation (f).

Nor legality of an interest in lands.

The legality of an interest in lands for which compensation is claimed cannot be tried before the assessing tribunal, but there is no obligation to assess compensation in respect of an interest in lands, which is not capable of a legal origin (g).

These assumed correctly stated.

So far as the validity of a title or the legality of an interest in lands is concerned, the assessing tribunal must assume that the claim brought forward is correctly stated (h).

In application to justices.

In the case of proceedings before justices under section 22 or section 121, it must be assumed that the title or interest of the owner is correctly stated in the original application which either party is empowered to make under section 24 of the Lands Clauses Act, 1845 (i).

In submission to arbitration.

In an arbitration, the arbitrators or umpire must assume that the title or interest of the owner is correctly stated in the documents containing their appointment which constitute the sub-

(e) *Caledonian Rail. Co. v. Turcan*, [1898] A. C. 256; 67 L. J. P. C. 69. Cf. *Edinburgh and District Water Trustees v. Clippens Oil Co.* (1902), 87 L. T. 275.

(f) *Chabot v. Lord Morpeth* (1850), 19 L. J. Q. B. 377; *R. v. London and North Western Rail. Co.* (1854), 23 L. J. Q. B. 185; *Chapman v. Monmouthshire Rail. and Canal Co.* (1858), 27 L. J. Ex. 97; *Horrocks (or R.) v. Metropolitan Rail. Co.* (1863), 32 L. J. Q. B. 367; *Brandon v. Brandon* (1864), 34 L. J. Ch. 333; *In re Dare Valley Rail. Co.* (1868), L. R. 6 Eq. 429; 37 L. J. Ch. 719; *Campbell v. Mayor, &c. of Liverpool* (1870), L. R. 9 Eq. 579; *Rhodes v. Airedale Drainage Commissioners* (1876), 1 C. P. D. 402; 45 L. J. C. P. 861; *R. v. Edwards* (1884), 13 Q. B. D. 586; 53 L. J. M. C. 149.

(g) *Horrocks (or R.) v. Metropolitan Rail. Co.* (1863), 32 L. J. Q. B. 367; *Re Penny and South Eastern Rail. Co.* (1857), 26 L. J. Q. B. 225.

(h) *Brierley Hill Local Board v. Pearsall* (1884), 9 App. Cas. 595, at p. 598; 54 L. J. Q. B. 25.

(i) *Cranwell v. Mayor, &c. of London* (1870), L. R. 5 Ex. 284; 39 L. J. Ex. 193. Cf. *R. v. Edwards* (1884), 13 Q. B. D. 586; 53 L. J. M. C. 149; *Great Northern and City Rail. Co. v. Tillet*, [1902] 1 K. B. 874; 71 L. J. K. B. 525.

mission to arbitration by the parties (*j*). Before the commencement of an arbitration for the assessment of compensation, an owner is required, under section 23 and section 68 of the Lands Clauses Act, 1845, to give notice in writing of the nature of his interest in the lands in question. It is of great importance that this should be done correctly, and in the appointment of an arbitrator to act on his behalf, it is the better plan for the owner to define the nature of his interest by reference to the notice in writing which he has already given (*k*). The promoters should merely appoint an arbitrator to consider the claim which the owner has made, since the arbitration may be a nullity if the submission of the owner and of the promoters are not in respect of the same subject-matter.

The description of lands contained in the warrant issued to the sheriff defines the subject-matter to which an inquiry before a jury is limited, and the inquisition should find the value of such lands to the owner, and the amount of compensation for injury to lands held therewith, neither more nor less (*l*). If lands have been already taken or injuriously affected, an owner, in demanding a jury, is required under section 68 to give notice of the nature of the interest in such lands for which he claims compensation, and the description of lands in the warrant issued to the sheriff should be the same as that given in such notice. Where lands are required to be taken and their value is to be assessed by a jury, the owner is not bound to give any previous notice of the nature of his interest in such lands (*m*), and the assessment should be made in respect of the interest claimed by him at the time of trial.

In warrant
issued to
sheriff.

Where the promoters under the powers of their special Act propose to take only part of a house, the warrant to the sheriff should raise the issues (1) whether the part can be severed without material detriment to the whole; (2) if so, what is the amount of compensation to be paid to the owner by the promoters, including damages for severance (*n*).

If compensation is claimed for injury done to lands through the construction of the authorized works, an assessing tribunal has

In claims for
injury to
lands.

(*j*) *In re Dare Valley Rail. Co.* (1868), L. R. 6 Eq. 429; 37 L. J. Ch. 719.

(*k*) Cf. *ante*, p. 185.

(*l*) *Stone v. Commercial Rail. Co.* (1839), 4 Myl. & Cr. 122.

(*m*) Cf. *Lord Fitzhardinge v. Gloucester, &c. Canal Co.* (1872), L. R. 7 Q. B. 776, at p. 781; 41 L. J. Q. B. 316.

(*n*) *Morrison v. Great Eastern Rail. Co.* (1885), 53 L. T. 384.

no power to decide whether the right to the compensation claimed can be maintained (*o*).

Collateral
matters not to
be considered.

An assessing tribunal, in fixing the amount of compensation, has no authority to consider collateral questions which do not form part of the subject-matter which has been submitted to its jurisdiction. It is not competent for such a tribunal to award the owner a larger sum in respect of possible claims against him by tenants, at the same time ordering him to give the tenants an indemnity (*p*); nor has it power to set out approaches to severed lands or to apportion the rents of premises of which a portion only is required (*q*); nor to direct the promoters to do work on the owner's lands as part of the compensation (*r*); nor to consider whether an agreement between the promoters and the claimant, whereby the promoters undertook to build a good and substantial wall, has been broken (*s*); nor to award interest (*t*).

The principle is fully illustrated in the case of *In re Dare Valley Rail. Co.* (*u*). The owners in that case were lessees of the minerals and of the surface of certain lands under separate demises, and claimed compensation as having an absolute right in the term. In the demise of the surface lands there was a proviso, that if any portion of the surface lands should be required to be taken for the railway in question, the demise should be deemed at an end as to the land so taken, subject to a reduction of rent as therein mentioned. The umpire in making his award took into consideration the effect of this proviso, although the claim of the owner was for an absolute right to the premises comprised in the lease during the continuance of the term. Giffard, V.-C., said on this point, "What was referred to the umpire was to ascertain what damage had been sustained by these parties claiming to have an absolute right in the term, and he had no business to assess

(*o*) *East and West India Dock Co. v. Gatlke* (1851), 20 L. J. Ch. 217; *Read v. Victoria Station, &c. Rail. Co.* (1863), 32 L. J. Ex. 167; *Beckett v. Midland Rail. Co.* (1866), L. R. 1 C. P. 241; 35 L. J. C. P. 163; *R. v. Vaughan* (1869), L. R. 4 Q. B. 190; 38 L. J. M. C. 49.

(*p*) *Caledonian Rail. Co. v. Lockhart* (1860), 3 Macq. H. L. (Sc.) 808.

(*q*) *In re Ware and Regent's Canal Co.* (1854), 23 L. J. Ex. 145; *South Wales Rail. Co. v. Richards* (*R. v. South Wales Rail. Co.*) (1849), 18 L. J. Q. B. 310. Cf. L. Cl. Act, 1845, s. 119, and Book II., p. 319.

(*r*) *R. v. South Holland Drainage Committee* (1838), 8 A. & E. 429.

(*s*) *In re Byles and Ipswich Dock Commissioners* (1855), 25 L. J. Ex. 53.

(*t*) *In re Richard and Great Western Rail. Co.*, [1905] 1 K. B. 68; 74 L. J. K. B. 9.

(*u*) (1868), L. R. 6 Eq. 429; 37 L. J. Ch. 719.

anything except the damage which they might sustain as having an absolute right in this term. Now the subject-matter upon which he awarded was not an absolute right in this term, but it was a right subject to a lessor's right to take away a portion of that land. In my judgment that was not referred to him at all, and, that being so, there was a mistake in point of the subject-matter of the reference."

In the same case (*x*) the umpire in making his award took into consideration a further collateral matter, viz., that the claimants had opposed some other railway, and wished this railway to come upon their land. Giffard, V -C., says on this point, "I do not think that was referred to the umpire, or that it was a matter for his consideration. . . . The question before him was this, and nothing else : What mischief has happened to you, the lessees, from having a railway come through that property of which you are lessees, say for fifty years, cutting one part of that property from the other? It was the right of the parties who made that claim to have the award on that, in order that they might bring their action upon that award, and have it determined in that action whether the lessor's right did or did not interfere with their right to receive the damages so awarded to them."

Provided that a right principle has been adopted as the basis of assessment (*y*), the decision of an assessing tribunal fixes the amount of compensation, and in this respect is not open to review (*z*). In accordance with this principle, it is competent for an assessing tribunal to find that no damage in fact has been sustained (*a*), provided such verdict is not based on a question of title (*b*). Questions of title, or of the right of an owner to compensation, are left open for subsequent consideration, unprejudiced

Assessment of compensation final as to amount, but gives no title or right to compensation.

(*x*) *In re Dare Valley Rail. Co.* (1868), L. R. 6 Eq. 429; 37 L. J. Ch. 719.

(*y*) *Stebbing v. Metropolitan Board of Works* (1870), L. R. 6 Q. B. 37; 40 L. J. Q. B. 1; *In re Dare Valley Rail. Co.* (1868), L. R. 6 Eq. 429; 37 L. J. Ch. 719; *Gough v. Liverpool Corporation* (1892), 8 Times L. R. 247, 323.

(*z*) *Mortimer v. South Wales Rail. Co.* (1859), 28 L. J. Q. B. 129; *Barber (or Baker) v. Nottingham and Grantham Rail. Co.* (1864), 33 L. J. C. P. 193; *R. v. Lancaster and Preston Rail. Co.* (1845), 14 L. J. Q. B. 84; *Gough v. Liverpool Corporation* (1892), 8 Times L. R. 247, 323.

(*a*) *R. v. Lancaster and Preston Rail. Co.* (1845), 6 Q. B. 759; *Brierley Hill Local Board v. Pearsall* (1884), 9 App. Cas. 595; 54 L. J. Q. B. 25.

(*b*) *Horrocks (or R.) v. Metropolitan Rail. Co.* (1863), 32 L. J. Q. B. 367; *R. v. London and North Western Rail. Co.* (1854), 23 L. J. Q. B. 185.

by the fact that an assessment of amount has been made under the Lands Clauses Act, 1845 (*c*).

Interest.

There is no jurisdiction in the assessing tribunal to award interest as between the date when the claimant's right first accrued and the date of the award (*d*).

Inquisitions under the Lands Clauses Acts do not stand on the same footing as inquiries before a sheriff to assess damages in an action in the High Court, where the Court of Appeal has jurisdiction to order a new trial (*e*).

Review of inquisition.

In an early case (*f*) it was attempted to review the decision of a jury on the question of the amount of compensation for which a verdict had been given. An application was made for a mandamus compelling a railway company to issue a second precept to a sheriff, on the ground that relevant evidence had been rejected, and that the verdict was against the evidence. Coleridge, J., in his judgment, says, "It was admitted that a direct motion for a new trial could not be made, and no doubt that was a proper admission. . . . But it was said the Court might direct a second precept to issue. It appears to me, however, that if I acceded to such a proposition, I should only be doing a thing indirectly which cannot be done directly."

Inquisition can be set aside by *certiorari* only.

The only mode of setting aside the inquisition is by writ of *certiorari*, which is available only where the sheriff has exceeded his jurisdiction (*g*). But defects invalidating an inquisition may be pleaded in answer to an action by the landowner for the compensation assessed (*h*).

The Court has no power to grant a new trial of an issue directed under section 41 of the Regulation of Railways Act, 1868, to be tried before a judge and jury in the High Court (*i*).

(*c*) *Campbell v. Mayor, &c. of Liverpool* (1869), L. R. 9 Eq. 579. Cf. *Brierley Hill Local Board v. Pearsall* (1884), 9 App. Cas. 595; 54 L. J. Q. B. 25.

(*d*) *In re Richard and Great Western Rail. Co.*, [1905] 1 K. B. 68; 74 L. J. K. B. 9.

(*e*) *W. Radams' Microbe Killer Co. v. Leather*, [1892] 1 Q. B. 85; 61 L. J. Q. B. 38.

(*f*) *R. v. Eastern Counties Rail. Co.* (1843), 12 L. J. Q. B. 271.

(*g*) See *Streatham Estates Co. v. Commissioners of Public Works* (1888), 52 J. P. 615 (Q. B. D.); affirmed on appeal, but not reported.

(*h*) See *Corrigal v. London and Blackwall Rail. Co.* (1843), 12 L. J. O. P. 209; *Brierley Hill Local Board v. Pearsall* (1884), 9 App. Cas. 595; 54 L. J. Q. B. 25.

(*i*) *Birmingham and District Land Co. v. London and North Western Rail. Co.* (1889), 22 Q. B. D. 435.

Section 49 of the Lands Clauses Act, 1845, enacts that, where the inquiry before a jury relates to the value of lands taken, and also to compensation claimed for injury done or to be done to the lands held therewith, a separate assessment is to be made of the purchase-money and compensation. This section is directory and not conditional ; it enables either party to require that the assessment for purchase-money and compensation shall be separately made, but the fact that this has not been done does not entitle the promoters to treat the verdict as a nullity, and is no defence to an action upon the verdict (*k*). If the assessment made says nothing as to damage for severance, it may be assumed that it is included in the amount (*l*), or that the assessing tribunal has by silence decided that there was no damage in fact (*m*).

Separate
assessment of
value of lands
and of injury
to lands.

(*k*) *Re Bradshaw's Arbitration* (1848), 17 L. J. Q. B. 362.

(*l*) *Re Hayne* (1865), 12 L. T. 200.

(*m*) *Duke of Beaufort v. Swansea Harbour Trustees* (1860), 29 L. J. C. P. 241.

CHAPTER XIV.

ENFORCING AN ASSESSMENT OF COMPENSATION.

After value of
lands required
has been
assessed,
specific per-
formance.

WHEN the value of lands has been fixed by an assessing tribunal in conformity with all the requirements of the Lands Clauses Act, 1845, or has been agreed, there is a final and complete contract, and either party can bring an action for specific performance (*a*). The form of the assessing tribunal makes no difference, and payment of the amount fixed by two justices is not an order enforceable by distress warrant (*b*). In order that specific performance may be enforced, the price must be certainly fixed and the contract between the parties must not include matters which would require a continuing supervision by the Court (*c*). Such matters cannot be brought before an assessing tribunal, if the practice of the Lands Clauses Act, 1845, is strictly followed (*d*).

Promoters
may claim
specific per-
formance.

If an owner refuses to convey, the promoters are empowered by sections 76, 77 of the Lands Clauses Act, 1845, to take possession of the lands after paying into Court the amount assessed as their value; but if this form of procedure does not give to the promoters sufficient protection, they can bring an action for specific performance (*e*). The promoters cannot refuse to take a conveyance of

(*a*) *Baker v. Metropolitan Rail. Co.* (1862), 32 L. J. Ch. 7; *Harding v. Metropolitan Rail. Co.* (1872), L. R. 7 Ch. 154; 41 L. J. Ch. 371; *Mason v. Stokes Bay Pier, &c. Co.* (1863), 32 L. J. Ch. 110; *Regent's Canal Co. v. Ware* (1857), 26 L. J. Ch. 566; *In re Pigott and Great Western Rail. Co.* (1881), 18 Ch. D. 146; 50 L. J. Ch. 679; *In re Cary-Elwes' Contract*, [1906] 2 Ch. 143. Cf. *Callow v. Flynn* (1890), 26 L. R. Ir. 179.

(*b*) *R. v. Edwards* (1884), 13 Q. B. D. 586; 53 L. J. M. C. 149. *Vide ante*, p. 182.

(*c*) *Wakefield v. Llanelly Rail. and Dock Co.* (1865), 3 De G. J. & S. 11; *Blackett v. Bates* (1865), L. R. 1 Ch. 117; 35 L. J. Ch. 324.

(*d*) *Vide ante*, p. 224.

(*e*) *Regent's Canal Co. v. Ware* (1857), 26 L. J. Ch. 566. Cf. *Bygrave v. Metropolitan Board of Works* (1886), 32 Ch. D. 147; 55 L. J. Ch. 602. As to the case of the promoters requiring owners of mines and minerals not to work, different considerations apply, and the promoters are not entitled to a conveyance: *Hamilton's (Duke) Trustees v. Caledonian Rail. Co.* (1905), 7 F. 847.

the lands on the ground of expense, merely paying the purchase-money into Court and entering into possession, they are bound to take a conveyance which must be settled by the Court in case the parties differ (*f*).

The contract, as in cases of private purchasers, can be enforced within a reasonable time (*g*).

The contract cannot be enforced, if the owner has claimed compensation in respect of a title which he could not make good, since specific performance cannot be decreed for the purchase of an interest of lands, to which the party desirous of selling (on inquiry ordered) fails to make a good title (*h*).

It is a good answer to an action for specific performance that no price has been fixed, in that the statutory provisions, under which an assessment should be made, have not been followed (*i*). If a party has consented to waive an alleged irregularity in respect of non-compliance with statutory requirements, such waiver would prevent a subsequent objection on the same ground (*g*). Where the price had been fixed for the purchase of lands from a party under disability, but the fairness of such price had not been certified by a surveyor, it was held by Romilly, M. R., in *Baker v. Metropolitan Rail. Co.* (*k*), that a company in possession could not raise this objection to the enforcement of the contract, the terms of which were approved by the Court. But this view appears to have been rejected by Lord Westbury on appeal (*l*), and so far, at least, as concerns owners under disability, it is now clear that compliance with the statutory formalities is essential to entitle the promoters to specific performance (*m*). Where the special procedure of the Lands Clauses Acts for obtaining immediate possession of property has not been followed, the promoters are not entitled to possession pending an action for specific performance (*n*).

To justify specific performance, statutory formalities must be complied with.

(*f*) *In re Cary-Elwes' Contract*, [1906] 2 Ch. 143.

(*g*) *Baker v. Metropolitan Rail. Co.* (1862), 32 L. J. Ch. 7.

(*h*) See Fry on Specific Performance.

(*i*) *Wycombe Rail. Co. v. Donnington Hospital* (1866), L. R. 1 Ch. 268. Cf. *Bridgend Gas Co. v. Dunraven* (1886), 31 Ch. D. 219; 55 L. J. Ch. 91.

(*k*) (1862), 32 L. J. Ch. 7.

(*l*) S. C., 31 Beav. at p. 511.

(*m*) *Bridgend Gas Co. v. Dunraven* (1886), 31 Ch. D. 219; 55 L. J. Ch. 91.

(*n*) *Bygrave v. Metropolitan Board of Works* (1886), 32 Ch. D. 147; 55 L. J. Ch. 602.

No action for payment of price until after conveyance.

An action for the payment of the price fixed, as distinguished from an action for specific performance, can be brought any time within six years of the date of the award (*o*), but it is not maintainable until after the execution or tender of a conveyance of the lands (*p*). This principle is illustrated by the case of *Howell v. Metropolitan District Rail. Co.* (*q*), in which it was held that the provisions of sections 49, 50 of the Lands Clauses Act, 1845, do not create an absolute debt from the promoters to the landowner, and that, until after conveyance of the land, the amount assessed for purchase-money and compensation is not attachable under a garnishee order as a debt "due or accruing."

Winding-up petition.

A landowner cannot file a petition to wind up the company for non-payment of compensation awarded, until his title has been investigated and accepted by the company. The award does not constitute an unpaid debt within the meaning of section 137 of the Companies (Consolidation) Act, 1908 (*r*).

If promoters in possession of lands, owner has rights of unpaid vendor.

If not only the value of lands has been assessed, but the promoters have also entered into possession, the owner has all the rights of an ordinary unpaid vendor (*s*) and can bring an action for specific performance, for a declaration of his lien over the lands, and for the enforcement of his lien by the appointment of a receiver and the sale of the lands in question (*t*); or if the land turns out to be unsaleable, by injunction restraining the undertakers from using it, even where a railway has been opened and is being used for public purposes (*u*). In bringing an action for specific performance and the declaration of a lien, the owner must be prepared to substantiate the title he has claimed, and to show that the price has been fixed in conformity with the statutory requirements.

(*o*) *Turner v. Midland Rail. Co.*, [1911] 1 K. B. 832.

(*p*) *East London Union v. Metropolitan Rail. Co.* (1869), L. R. 4 Ex. 309; 38 L. J. Ex. 225; following *Laird v. Pim* (1841), 10 L. J. Ex. 259.

(*q*) (1881), 19 Ch. D. 508; 51 L. J. Ch. 158.

(*r*) *In re Milford Docks Co., Lister's Petition* (1883), 23 Ch. D. 292; 52 L. J. Ch. 774. Cf. *Callow v. Flynn* (1890), 26 L. R. Ir. 179.

(*s*) Cf. *ante*, pp. 61, 102.

(*t*) *Walker v. Ware, &c. Rail. Co.* (1866), L. R. 1 Eq. 195; 35 L. J. Ch. 94; *Wing v. Tottenham and Hampstead Junction Rail. Co.* (1868), L. R. 3 Ch. 740; 37 L. J. Ch. 654; *Munns v. Isle of Wight Rail. Co.* (1870), L. R. 5 Ch. 414; 39 L. J. Ch. 522.

(*u*) *Williams v. Aylesbury, &c. Rail. Co.* (1873), 28 L. T. 547; *Allgood v. Merrybent, &c. Rail. Co.* (1886), 33 Ch. D. 571; 55 L. J. Ch. 743.

In addition to the remedies open to an owner as an unpaid vendor, the Court, under section 87 of the Lands Clauses Act, 1845, has power, in the event of the non-performance of the condition in the bond, to order payment to the owner of the sum deposited under section 85, on a petition presented for that purpose by him adversely to the company (*x*). Under the Rules of the Supreme Court, this application, where the amount does not exceed 1,000*l.*, should be made by summons (*y*). In case of bonds.

If lands have been entered upon, but their value has not been agreed upon or assessed, sections 68 and 121 of the Lands Clauses Act, 1845, fully protect the owner. Any such owner has it in his power to bring the question of assessment before two justices or an arbitrator (*z*). After the assessment, the owner would have all the rights of an unpaid vendor, and the method of enforcing these rights has already been considered. If promoters in possession of land, owner can have value assessed.

If an owner desires to have the amount of compensation assessed by a jury, he has no power of issuing a warrant for the summoning of a jury, but if he has an interest greater than that of a yearly tenant, or of a tenant from year to year, and claims more than 50*l.*, and gives notice of his desire to have the value of his lands assessed by a jury, and states the nature of his interest in such lands, and the amount claimed for compensation, the promoters must, within twenty-one days from receiving such notice, issue their warrant to the sheriff to summon a jury, and, in default thereof, they become liable to pay the amount so claimed, which may be recovered with costs by action in the High Court (*a*). Owner can recover amount claimed on default of promoters to summon jury.

In an action brought by an owner to recover the amount of compensation claimed as the value of lands, on default of the promoters issuing their warrant to summon a jury, the promoters can put in issue any of the material facts on which the owner relies to substantiate his claim. Defences open in action to enforce claim.

It is a good defence, that the owner has not stated the nature of his interest in accordance with the provisions of section 68 of the Lands Clauses Act, 1845, or that he has stated it incorrectly, or that the promoters have not received a notice from the owner, stating the nature of his interest, and that he is desirous of having Want of compliance with statutory conditions on part of plaintiff.

(*x*) *In re Mutlow's Estate* (1879), 10 Ch. D. 131; 48 L. J. Ch. 198.

(*y*) O. L.V. r. 2, sub-s. 2. *Vide post*, p. 250.

(*z*) *Ante*, pp. 176, 187.

(*a*) S. 68, L. Cl. Act, 1845.

the question of compensation settled by a jury (*b*). But the promoters waive this defence of insufficiency of particulars if they consent to arbitrate on an insufficient claim (*c*). If a notice has in fact been received and brought before the defendants, it is no defence that it was wrongly directed (*d*).

That defendants have complied with statutory conditions.

It is a good defence that the promoters have not taken the lands in question (*e*), or that they have issued their warrant to summon a jury within the required time (*f*).

That plaintiff has waived his rights.

It would be a good defence, that the owner had waived his rights under section 68, or that he had acted in such a way as to make it impossible for the defendants to comply with its provisions by summoning a jury. A requisition for a special jury made by the owner, and leaving a reasonable time before the expiration of twenty-one days from the date of his original notice stating a desire to have the question of compensation settled by a jury, is not a waiver of his rights by the owner, and he is entitled to the whole amount claimed, on default of the promoters to summon a jury within twenty-one days of his original notice (*g*).

That the claim cannot be supported, under the incorporating Acts.

The promoters can plead in defence, that their special Acts do not incorporate section 68 of the Lands Clauses Act, 1845 (*h*), or that the interest, in respect of which the owner is claiming, being not greater than that of a yearly tenant or of a tenant from year to year, is not within the terms of the section (*i*).

Amount cannot be disputed.

Provided that the claim is in other respects valid, the promoters cannot put in issue the amount claimed (*k*). This they have become liable to pay in default of issuing their warrant to summon a jury. It was held a bad plea under the Common Law Procedure Act, that "the claim was not a *bonâ fide* claim within the statute,

(*b*) *Healey v. Thames Valley Rail. Co.* (1864), 34 L. J. Q. B. 52; *Eastham* (or *Eastbourne*) *v. Blackburn Rail. Co.* (1854), 23 L. J. Ex. 199.

(*c*) *Lovering v. City of London, &c. Subway Co.* (1891), 7 Times L. R. 600.

(*d*) *Eastham* (or *Eastbourne*) *v. Blackburn Rail. Co.* (1854), 23 L. J. Ex. 199.

(*e*) *Burkinshaw v. Birmingham and Oxford Rail. Co.* (1850), 20 L. J. Ex. 246. Cf. *Barker v. Metropolitan Rail. Co.* (1864), 17 C. B. N. S. 785.

(*f*) *Railstone v. York, &c. Rail. Co.* (1850), 19 L. J. Q. B. 464.

(*g*) *Glyn v. Aberdare Rail. Co.* (1859), 28 L. J. C. P. 271.

(*h*) *Wale v. Westminster Palace Hotel Co.* (1860), 8 C. B. N. S. 276; *Ferrar v. Commissioners of Sewers* (1869), L. R. 4 Ex. 227; 38 L. J. Ex. 102.

(*i*) *R. v. Manchester, Sheffield and Lincolnshire Rail. Co.* (1854), 4 E. & B. 88; *Knapp v. London, Chatham and Dover Rail. Co.* (1863), 32 L. J. Ex. 236; *R. v. Great Northern Rail. Co.* (1876), 2 Q. B. D. 151; 46 L. J. Q. B. 4.

(*k*) *Mortimer v. South Wales Rail. Co.* (1859), 28 L. J. Q. B. 129. Cf. *Barber* (or *Baker*) *v. Nottingham, &c. Rail. Co.* (1864), 33 L. J. C. P. 193.

but in fraud of the defendants and without any reasonable cause" (*l*).

An assessment of compensation by two justices under section 24 or section 121 of the Lands Clauses Act does not constitute an order for the payment of money under section 11 of the Summary Jurisdiction Act, 1848, and cannot be enforced by warrant of distress, the justices having only authority to settle the amount in dispute, and not to decide upon the title of the claimant (*m*). It follows that a claim for compensation before justices is not barred by not being brought within six months.

Assessment by justices not enforceable by warrant of distress.

It seems clear that an award of arbitrators or an umpire under the Lands Clauses Acts could not be enforced by motion under the Common Law Procedure Act, 1854, inasmuch as it only determines the amount of compensation, and not the right of the claimant to receive it (*n*). Section 12 of the Arbitration Act, 1889, provides that an award on a submission may, by leave of the High Court or a judge, be enforced in the same manner as a judgment or order to the same effect. This procedure is applicable to awards under the Lands Clauses Acts, but where any serious question of right or title is involved, it is not probable that the Court or a judge would give leave to enforce the award in a summary manner (*o*).

Enforcement of award.

When lands have not been taken, but have only been injuriously affected, and the owner is desirous of enforcing payment of the amount claimed by him in default of the promoters summoning a jury, there is no difference in the procedure to be adopted.

Enforcing payment of compensation for injuriously affecting lands.

If the amount payable as compensation for injury has not been assessed, the owner is protected, as in the case of lands taken, by sections 68 and 121 of the Lands Clauses Act, 1845. It is in his power to commence proceedings before two justices or an arbitrator. The owner cannot enforce the summoning of a jury, but the

Power of owner to have amount of injury assessed.

(*l*) *Hooper v. Bristol Port Rail. and Pier Co.* (1866), 35 L. J. C. P. 299.

(*m*) *R. v. Edwards* (1884), 13 Q. B. D. 586; 53 L. J. M. C. 149. Cf. *Great Northern and City Rail. Co. v. Tillet*, [1902] 1 K. B. 874; 71 L. J. K. B. 525. And see p. .

(*n*) *East and West India Dock Co. v. Gattke* (1851), 20 L. J. Ch. 217; *In re Newbold and Metropolitan Rail. Co.* (1863), 14 C. B. N. S. 405; *Re Walker and Beckenham Local Board* (1884), 50 L. T. 207. Cf. *London and Blackwall Rail. Co. v. Cross* (1886), 31 Ch. D. 354, 367; 55 L. J. Ch. 313; *Brierley Hill Local Board v. Pearsall* (1884), 9 App. Cas. 595, 601, *per* Lord Selborne; 54 L. J. Q. B. 25.

(*o*) Cf. *In re Willesden L. B. and Wright*, [1896] 2 Q. B. 412; 65 L. J. Q. B. 567. *Vide ante*, p. 197.

promoters, if they do not issue their warrant to summon a jury within the time fixed, become liable to pay the amount of compensation claimed, and payment of the amount and interest can be enforced by action in the High Court (*p*).

Amount assessed cannot be disputed.

In an action brought to enforce payment of the amount of compensation for injury done to lands through the construction of authorized works, the promoters cannot in defence dispute the amount (*q*); but they can put in issue any of the material allegations on which the owner relies to substantiate his claim.

The title of an owner or his right to compensation can be disputed.

The question of the title of the owner, or of the legality of the interest in lands, for injury to which compensation is claimed, can be raised in an action brought for payment of the amount (*r*); and so can the question of the right of the owner to compensation in respect of the damage for which compensation has been claimed. The form in which this defence should be pleaded is by a denial in the defence of the facts on which the plaintiff relies to show that his interests have been injuriously affected (*s*).

It is a defence that incorporating Acts give no claim to compensation;

The promoters can plead as a defence that the Acts of Parliament under which they are incorporated or acting do not contain any provision entitling an owner to compensation where his lands have been injuriously affected (*t*).

In order to entitle an owner to have the amount of compensation assessed by an arbitrator or by a jury, the amount claimed must exceed 50*l*. If the amount claimed does exceed 50*l*., it is not a good defence to allege that the plaintiff is entitled to less than 50*l*. (*u*).

or that plaintiff has not complied with statutory conditions;

It would be a good defence that the owner has not stated the nature of his interest in lands in the manner required by section 68 of the Lands Clauses Act, or that the promoters have not received a notice from the owner stating such interest, and his desire to

(*p*) *Vide ante*, p. 208.

(*q*) *Mortimer v. South Wales Rail. Co.* (1859), 28 L. J. Q. B. 129.

(*r*) *R. v. London and North Western Rail. Co.* (1854), 23 L. J. Q. B. 185; *R. (or Horrocks) v. Metropolitan Rail. Co.* (1863), 32 L. J. Q. B. 367.

(*s*) *Read v. Victoria Station, &c. Rail. Co.* (1863), 32 L. J. Ex. 167; *Beckett v. Midland Rail. Co.* (1866), L. R. 1 C. P. 241; 35 L. J. C. P. 163.

(*t*) *Broadbent v. Imperial Gaslight Co.* (1859), 26 L. J. Ch. 276; *Ferrar v. Commissioners of Sewers of City of London* (1869), L. R. 4 Ex. 227; 38 L. J. Ex. 102; *Wale v. Westminster Palace Hotel Co.* (1860), 8 C. B. N. S. 276.

(*u*) *Read v. Victoria Station, &c. Rail. Co.* (1863), 32 L. J. Ex. 167.

have the question of compensation settled by an arbitrator or by a jury (*x*), unless the irregularity has been waived (*y*).

If the promoters have issued their warrant to the sheriff for summoning a jury within the twenty-one days required by section 68 of the Lands Clauses Act, 1845, this would be an answer to an action for payment of an amount claimed in default of such warrant having been issued (*z*).

or that defendants have so complied.

In an action on an award, such award being good on the face of it, the mistake or wilful misconduct of an arbitrator cannot it would seem be pleaded as a defence; if a party seeks to avoid an award on such grounds, he should take steps to have the award set aside (*a*).

Mistake of an arbitrator cannot be pleaded.

The question of the title of an owner to compensation can be stated in a special case under the provisions of R. S. C., O. XXXIV r. 1, for the opinion of the High Court (*b*).

Special case may be stated by parties.

The arbitrator or umpire may at any stage in the proceedings state, in the form of a special case for the opinion of the High Court, any question of law arising in the course of the arbitration (*c*), and may also state his award in the form of a special case (*d*). The High Court has power to require an arbitrator to state a special case on a point of law, should he refuse to do so (*e*).

Statement of case.

The provisions of the Common Law Procedure Act, 1854, with regard to remitting matters for the reconsideration of the arbitrator, and enlarging the time for making the award (sections 8, 15), were held applicable to arbitrations under the Lands Clauses Acts and similar Acts (*f*). The sections were repealed, but re-

Remitting questions to an arbitrator.

(*x*) *Cameron v. Charing Cross Rail. Co.* (1864), 33 L. J. C. P. 313; *Healey v. Thames Valley Rail. Co.* (1864), 34 L. J. Q. B. 52; *Eastham* (or *Eastbourne*) *v. Blackburn Rail. Co.* (1854), 23 L. J. Ex. 199.

(*y*) *Lovering v. City of London, &c. Subway Co.* (1891), 7 Times L. R. 301, 600.

(*z*) *Railstone v. York, &c. Rail. Co.* (1850), 19 L. J. Q. B. 464.

(*a*) *Whitmore v. Smith* (1861), 31 L. J. Ex. 107; *Johnson v. Durant* (1831), 2 B. & Ad. 925; *Thorburn v. Barnes* (1867), L. R. 2 C. P. 384; 36 L. J. C. P. 184; *Bache v. Billingham*, [1894] 1 Q. B. 107; 63 L. J. M. C. 1.

(*b*) Cf. *Ferrar v. Commissioners of Sewers* (1869), L. R. 4 Ex. 227; 38 L. J. Ex. 102.

(*c*) Arb. Act, 1889, s. 19.

(*d*) Arb. Act, 1889, s. 7, sub-s. (b).

(*e*) Arb. Act, 1889, s. 19. *Vide ante*, p. 195.

(*f*) *Re Dare Valley Rail. Co. and Rhys* (1869), L. R. 4 Ch. 554; *Rhodes v. Airedale Drainage Commissioners* (1876), 1 C. P. D. 402; 45 L. J. C. P. 861; *Re Ward* (1862), 11 W. R. 88.

enacted without material alteration in the Arbitration Act, 1889 (sections 9, 10) (*g*).

Separate assessments.

If in the assessment of compensation for injury done to lands, there are included doubtful items, expense may be saved to both parties by a separate assessment of such items, in order that the validity of the claim in respect thereof may be separately decided, and that the rest of the award or of the verdict may in any event be sustained and acted upon (*h*).

The award or verdict is no evidence on matters in issue.

In an action brought for payment of the amount of compensation assessed in respect of injury done to lands by the construction of the authorized works, the plaintiff cannot rely entirely on the award of the arbitrator or the verdict of the jury ; but must give affirmative evidence of the material allegations which are put in issue by the statement of defence, and prove, if necessary, that the assessment only includes matters for which his right to compensation can be maintained (*i*).

Capacity of arbitrator as a witness.

The evidence of the arbitrator is admissible for certain purposes and within certain limits. An arbitrator is a competent witness to state matters of fact which have taken place before him up to the time when he proceeded to make his award, so far as they are relevant in a plea to his jurisdiction, which alleges that he has mistaken the subject-matter referred to him, and has taken into account questions not submitted to his decision (*k*). But the award is a written document which speaks for itself (*l*), and the evidence of the arbitrator is not admissible to explain its terms, or the considerations which influenced him in fixing the amount (*m*).

(*g*) *Vide ante*, pp. 196, 197.

(*h*) *Beckett v. Midland Rail. Co.* (1866), L. R. 1 C. P. 241, 246; 35 L. J. C. P. 163.

(*i*) *Chapman v. Monmouthshire Rail. and Canal Co.* (1858), 27 L. J. Ex. 97; *Rhodes v. Airedale Drainage Commissioners* (1876), 1 C. P. D. 402; 45 L. J. C. P. 861.

(*k*) *In re Dare Valley Rail. Co.* (1868), L. R. 6 Eq. 429; 37 L. J. Ch. 719; *Buccleuch v. Metropolitan Board of Works* (1868), L. R. 3 Ex. 306; 5 Ex. 221; 5 H. L. 418; 41 L. J. Ex. 137.

(*l*) Cf. *O'Rourke v. Commissioner for Railways* (1890), 15 App. Cas. 371; 59 L. J. P. C. 72.

(*m*) *Buccleuch v. Metropolitan Board of Works* (1868), *supra*.

CHAPTER XV

SETTING ASIDE AN ASSESSMENT OF COMPENSATION.

THE decision of an assessing tribunal as to the amount of compensation is final and not subject to appeal (*a*), except in the cases dealt with by sections 64, 65, of the Lands Clauses Act, 1845, which provide that if the valuation of a surveyor is made in respect of the interest in lands of an owner who could not be found, or was absent from the kingdom, such owner is entitled to submit to arbitration the sufficiency of the surveyor's valuation (*b*). In this case an appeal is given from a surveyor to arbitration, although there is no power in the arbitrators to decide that the valuation of the surveyor is too high.

Assessment is final as to amount.

Except in case of absent owner.

In certain special cases, however, the Court will set aside the assessment of the justices, jury, or arbitrator.

If it is desired to question the decision of two justices, or the verdict of a jury, the proper procedure is by writ of *certiorari*, but the granting of the writ is subject to the provisions of section 145 of the Lands Clauses Act, 1845:—"No proceeding in pursuance of this or the special Act, or any Act incorporated herewith, shall be quashed or vacated for want of form, nor shall the same be moved by *certiorari*, or otherwise, into any of the superior courts" (*c*).

Certiorari in case of justices and jury.

Notwithstanding, there are two well-recognized cases in which a *certiorari* will be granted to quash proceedings for the assessment of compensation before two justices or before a jury—(1) where there has been a want or excess of jurisdiction, (2) where the tribunal itself has been improperly constituted.

Granted in cases of want of jurisdiction or improper constitution of tribunal.

(1) If compensation is assessed, but the circumstances are such that the owner can have no claim thereto, there is manifestly an excess of jurisdiction, and a *certiorari* will be granted (*d*).

(1) Want or excess of jurisdiction. If owner can have no claim.

(*a*) See *Barber (or Baker) v. Nottingham, &c. Rail. Co.* (1864), 33 L. J. C. P. 193.

(*b*) Ss. 64, 65, L. Cl. Act, 1845.

(*c*) Cf. L. Cl. Act, 1845, s. 37.

(*d*) *Re Penny and South Eastern Rail. Co.* (1857), 26 L. J. Q. B. 225.

When there is mistake in subject-matter for decision.

The assessment of compensation in respect of a subject-matter other than that which is submitted to the decision of the justices or of the jury, is an excess of jurisdiction, and a *certiorari* will be granted. An inquisition will be quashed for error apparent on the face of it, or clear excess of jurisdiction (*e*). If the jury have purported to decide a question of title, or of the legality of an interest in lands for which compensation is claimed (*f*), or have taken into consideration collateral matters over which they have no jurisdiction (*g*), or have given compensation in respect of damage by which the claimant has not been injuriously affected (*h*), the inquisition will be quashed. In this last case it would be competent for the promoters to raise the question of right to compensation as a defence to an action brought to enforce payment of the amount (*i*).

Want of jurisdiction.

If the justices or jury do not exercise their jurisdiction, and do not assess compensation in respect of an item of damage which gives the owner a right to claim compensation, there is a want of jurisdiction, and the remedy of an owner would be to have the assessment brought up and quashed by a writ of *certiorari* (*k*). In the case of an assessment by justices who refuse to entertain an item of compensation claimed, it is competent to apply for a mandamus on the ground that there has been a refusal to exercise jurisdiction (*l*).

In an early case (*m*) the Court of Queen's Bench refused to grant a *certiorari* where there had been an excess of jurisdiction, on the ground that the owner would have a remedy in an action of trespass if the promoters entered upon the lands in question. In the subsequent case of *R. v. Sheffield and Manchester Rail. Co.* (*n*), the earlier case (*m*) was referred to, and the Court,

(*e*) *R. v. Halifax L. B.* (1865), 14 L. T. 447.

(*f*) *R. v. London and North Western Rail. Co.* (1854), 23 L. J. Q. B. 185; *R. (or Horrocks) v. Metropolitan Rail. Co.* (1863), 32 L. J. Q. B. 367.

(*g*) *South Wales Rail. Co. v. Richards (R. v. South Wales Rail. Co.)* (1849), 18 L. J. Q. B. 310.

(*h*) *Re Penny and South Eastern Rail. Co.* (1857), 26 L. J. Q. B. 225; *Cowper Essex v. Acton L. B.* (1889), 14 App. Cas. 153; 58 L. J. Q. B. 594.

(*i*) *Read v. Victoria Station, &c. Rail. Co.* (1863), 32 L. J. Ex. 167; *Chapman v. Monmouthshire Rail., &c. Co.* (1858), 27 L. J. Ex. 97.

(*k*) Cf. *In re Dare Valley Rail. Co.* (1868), L. R. 6 Eq. 429; 37 L. J. Ch. 719.

(*l*) *R. v. Vaughan* (1869), L. R. 4 Q. B. 190.

(*m*) *R. v. Bristol and Exeter Rail. Co.* (1838), 2 Rail. Cas. 99.

(*n*) (1839), 11 A. & E. 194.

although not expressly overruling it, affirmed the general proposition, that in cases where there has been an excess of jurisdiction, a *certiorari* will be granted (*o*). If lands have been entered upon before an assessment of their value has been duly made, an action of trespass will lie against the promoters (*p*); but there would be no similar remedy where lands had not been entered upon, but only injuriously affected.

If an assessment has been made on the basis of a principle which is bad in law, there is a mistake in the subject-matter submitted to the decision of the assessing tribunal; and in such a case a *certiorari* would be granted to quash the decision of the justices or the verdict of the jury (*q*). Such *certiorari* would not be necessary in the interests of the promoters, since they could raise this objection in a defence to an action brought for payment of the amount (*r*); but it might be the only method in which an owner could get rid of an assessment in which his claim to compensation had not been fully considered through the adoption of a wrong principle.

Where assessment is on a basis bad in law.

(2) The justices or jury are not a properly constituted tribunal if the justices or the sheriff have any interest in the matters in question, and in such a case a *certiorari* quashing the proceedings will be granted (*s*). The definition clause in the Act (*t*) expressly excludes interested justices or sheriffs from the assessment tribunals. But the Court will not grant a *certiorari* on the application of a party who, knowing of a defect in the constitution of an assessing tribunal, appears and consents to submit to its jurisdiction (*u*). An inquisition will not be set aside on the ground of want of qualification in a jurymen; this objection should be taken

(2) Where tribunal improperly constituted.

This may be waived.

(*o*) Cf. *Cowper Essex v. Acton L. B.* (1889), 14 App. Cas. 153, *per* Halsbury, L. C., at p. 160; 58 L. J. Q. B. 594.

(*p*) *Cranwell v. Mayor, &c. of London* (1870), L. R. 5 Ex. 284; 39 L. J. Ex. 193. Cf. *R. v. Bristol and Exeter Rail. Co.* (1838), 2 Rail. Cas. 99.

(*q*) Cf. *In re Dare Valley Rail. Co.* (1868), L. R. 6 Eq. 429; 37 L. J. Ch. 719.

(*r*) *Stebbing v. Metropolitan Board of Works* (1870), L. R. 6 Q. B. 37; *In re Penny and South Eastern Rail. Co.* (1857), 26 L. J. Q. B. 225; *R. v. Scard* (1894), 27 W. R. 540.

(*s*) *R. v. Rand* (1866), L. R. 1 Q. B. 230; 35 L. J. M. C. 157; *R. v. Justices of Hertfordshire* (1845), 6 Q. B. 753; *R. v. Sheriff of Warwickshire* (1854), 3 W. R. 164.

(*t*) S. 3.

(*u*) *Emanuel Hospital v. Metropolitan District Rail. Co.* (1869), 19 L. T. 692. Cf. *R. v. South Holland Drainage Committee* (1838), 8 A. & E. 429.

by challenge (*v*). The verdict of a jury may be set aside on the ground of treating, as where the claimant gives the jury a champagne luncheon (*x*).

If part of assessment is bad the whole is bad unless separable.

If part of an assessment is bad, a *certiorari* lies as to the whole, unless it has been settled in such a form that the part which is bad is separate from and can be dealt with apart from that which is good (*y*).

The procedure on application for a writ of *certiorari* is now regulated by the Crown Office Rules, 1906, and in particular rr. 20—24 and 27.

Affidavit to state grounds of asking for *certiorari*.

The grounds on which a *certiorari* is asked for must be shown by affidavit before motion, in which the defects in the inquisition upon which reliance is placed by the applicant should be verified (*z*); and care should be taken to draw up the affidavit in a clear and precise form, setting out exactly the point or points on which the applicant relies (*a*). It is necessary to set out or exhibit a copy of the inquisition, or to account for its absence to the satisfaction of the High Court (*b*).

Time within which application should be made.

It is discretionary in the Court to grant a *certiorari* to bring up an inquisition taken under the Lands Clauses Act, 1845, for the purpose of quashing it; and a *certiorari* will not be granted if a long time is allowed to elapse between the verdict of the jury and the application made to the Court. As a general rule a writ of *certiorari* will not be granted after the expiration of the time which would have been allowed for setting aside an award made under the provisions of the Lands Clauses Act, 1845 (*c*).

Not for irregularities in form.

The writ, being expressly taken away by statute, can only issue where the jurisdiction given by the Lands Clauses Acts has been

(*v*) *In re Chelsea Waterworks Co., Ex parte Phillips* (1855), 24 L. J. Ex. 79; *Cooling v. Great Northern Rail. Co.* (1850), 19 L. J. Q. B. 529.

(*x*) *Tanner v. Swindon, & Co. Rail. Co.* (1881), 45 L. T. 209. Cf. *Re Maunders* (1883), 49 L. T. 535.

(*y*) *Re Penny and South Eastern Rail. Co.* (1857), 26 L. J. Q. B. 225; *R. v. London and North Western Rail. Co.* (1854), 23 L. J. Q. B. 185. Cf. *Caledonian Rail. Co. v. Ogilvy* (1856), 2 Macq. H. L. (Sc.) 229; *R. v. Seard* (1894), 27 W. R. 540.

(*z*) *R. v. Manchester and Leeds Rail. Co.* (1838), 8 A. & E. 413, 417, *per* Lord Denman; 8 L. J. Q. B. 66; *Re Penny and South Eastern Rail. Co.* (1857), 26 L. J. Q. B. 225.

(*a*) *Re Penny and South Eastern Rail. Co.* (1857), 26 L. J. Q. B. 225; *R. v. Manchester and Leeds Rail. Co.* (1838), 8 A. & E. 413; 8 L. J. Q. B. 66.

(*b*) Cr. Off. Rules, 1906, r. 22.

(*c*) *R. v. Sheward* (or *Steward*) (1880), 5 Q. B. D. 179; 9 Q. B. D. 741; 49 L. J. Q. B. 329, 716.

exceeded (*d*), and will not be granted if the proceedings before two justices or a jury are merely irregular in form and the question of jurisdiction does not arise (*e*).

The party who has acquiesced in, or by his conduct has conduced to, irregularities in form cannot afterwards be heard to raise such irregularities as an objection to the validity of proceedings in which he has concurred (*f*).

A deviation from the requirements of the principal Act or the special Act which merely amounts to an irregularity in the exercise of jurisdiction is not a ground for granting a writ of *certiorari* (*g*).

The award of an arbitrator (*h*) under the Lands Clauses Acts cannot be set aside for irregularity or error in matter of form (*i*). An award which, in addition to the assessment of the amount of compensation, contains an order to pay, is erroneous, if at all, merely in form, and will not be set aside (*j*).

Motion to set aside award of an arbitrator.

Award not set aside for irregularity in form.

An award which assesses one sum for damage and the price of land taken, instead of a separate sum on each account, is not invalid and will not be set aside (*k*).

An arbitrator has not jurisdiction to determine collateral matters (*l*).

The Court will set aside the award of an arbitrator where there has been a want of jurisdiction or misconduct on the part of the arbitrator, or the award has been improperly procured (*m*). Where

Award set aside for want of jurisdiction or misconduct.

(*d*) *Cowper Essex v. Acton L. B.* (1889), 14 App. Cas. 153, at p. 160, *per* Halsbury, L. C.; 58 L. J. Q. B. 594.

(*e*) *R. v. Lancaster and Preston Junction Rail. Co.* (1845), 14 L. J. Q. B. 84; *R. v. Sheffield, &c. Rail. Co.* (1839), 11 A. & E. 194, 200.

(*f*) *R. v. South Holland Drainage Committee* (1838), 8 A. & E. 429; *Tower v. Eastern Counties Rail. Co.* (1843), 3 Rail. Cas. 374; *Corrigal v. London and Blackwall Rail. Co.* (1843), 12 L. J. C. P. 209.

(*g*) *R. v. Sheffield, &c. Rail. Co.* (1839), 11 A. & E. 194, 200, Patteson, J.

(*h*) On this subject, see further Russell on Arbitration.

(*i*) S. 37, L. Cl. Act, 1845.

(*j*) *In re Harper and Great Eastern Rail. Co.* (1875), L. R. 20 Eq. 39; 44 L. J. Ch. 507. Cf. *Lindsay v. Direct London and Portsmouth Rail. Co.* (1850), 19 L. J. Q. B. 417.

(*k*) *Re Bradshaw's Arbitration* (1848), 17 L. J. Q. B. 362.

(*l*) *Re Byles and Ipswich Dock Commissioners* (1855), 25 L. J. Ex. 53; and *vide ante*, p. 224.

(*m*) Arbitration Act, 1889, s. 11 (2); *Buccleuch (Duke of) v. Metropolitan Board of Works* (1872), L. R. 5 Ex. 221, 232; 5 H. L. 418; *In re Dare Valley Rail. Co.* (1868), L. R. 6 Eq. 429; 37 L. J. Ch. 719; *Underwood v. Bedford and Cambridge Rail. Co.* (1861), 31 L. J. C. P. 10; *Whitmore v. Smith* (1860), 29 L. J. Ex. 402; (1861), 31 L. J. Ex. 107. Cf. *ante*, p. 189.

the mistake is as to the extent and nature of the arbitrator's authority, such mistake has the same consequence as wilful disregard of the limits of the authority, and in such a case the award is impeachable (*n*). If a lump sum is awarded, and it appears on the face of the award and is proved by extrinsic evidence, that in arriving at such sum matters were taken into account which the arbitrator had no jurisdiction to consider, the award is bad (*o*). But where there is jurisdiction to make an award, and the question is of a possible excess of jurisdiction, the award cannot be impeached by showing that the arbitrator did in fact exceed his jurisdiction (*p*).

If a party to an arbitration, acting *bonâ fide*, requests the arbitrator on reasonable grounds, either to state a special case for the opinion of the Court upon some question material for consideration which arises, or to delay the award until the party can himself apply to the Court for an order directing a special case, and the arbitrator refuses to comply with the request, or by summarily making his award attempts to preclude the party from applying, the arbitrator is *primâ facie* guilty of a breach of duty towards that party (*q*), and such breach of duty may amount to misconduct.

The fact that an award will not be set aside does not prevent any objection to its validity being raised in defence to an action brought to enforce it (*r*).

Time within
which motion
must be made.

An application to set aside an award under the Lands Clauses Act, 1845, may be made by motion at any time within six weeks after such award has been made and published to the parties (*s*).

(*n*) *Buccleuch (Duke of) v. Metropolitan Board of Works* (1872), L. R. 5 Ex. 221, *per* Blackburn, J., at p. 232. Cf. *In re Dare Valley Rail. Co.* (1868), L. R. 6 Eq. 429; 37 L. J. Ch. 719.

(*o*) *Beckett v. Midland Rail. Co.* (1866), L. R. 1 C. P. 241; 3 C. P. 82; 35 L. J. C. P. 163; *Falkingham v. Victorian Railway Commissioners*, [1900] A. C. 452; 69 L. J. P. C. 89. Cf. *Fisher v. Pinbley* (1809), 11 East, 188; *Buccleuch (Duke of) v. Metropolitan Board of Works* (1872), L. R. 5 Ex. 221; 5 H. L. 418; 41 L. J. Ex. 137.

(*p*) *Falkingham v. Victorian Railway Commissioners*, [1900] A. C. 452; 69 L. J. P. C. 89.

(*q*) *In re Palmer & Co. and Hosken & Co.*, [1898] 1 Q. B. 131.

(*r*) *North Staffordshire Rail. Co. v. Wood* (1848), 17 L. J. Ex. 354; *Re North Staffordshire Rail. Co. and Landor* (1848), 17 L. J. Ex. 350; *Palmer v. Metropolitan Rail. Co.* (1862), 31 L. J. Q. B. 259; *Faviell v. Eastern Counties Rail. Co.* (1848), 17 L. J. Ex. 223.

(*s*) R. S. C., O. LXIV. r. 14. Cf. *In re Harper and Great Eastern Rail. Co.* (1875), L. R. 20 Eq. 39; 44 L. J. Ch. 507.

Notice of motion must be given, which must state the general grounds on which the application is made. The service of the notice of motion must be at least two clear days before the day named in the notice for hearing the motion (*t*). The Court or a judge has power to extend the time for moving to set aside an award before or after the time has elapsed (*u*). Under the old practice it was held that "a complaint" (not an application) had been commenced by the service of a notice of motion and the filing of an affidavit within the time limited; but it would be imprudent to rely on this decision (*x*).

Section 10 of the Arbitration Act, 1889, provides that in all cases of reference to arbitration the Court or a judge may from time to time remit the matters referred, or any of them, to the re-consideration of the arbitrators or umpire. This section is applicable to arbitrations under the Lands Clauses Acts, and the effect is that all such submissions to arbitration will be held to contain a clause giving the Court power to refer back the award to the arbitrator or umpire (*y*), even though he be *functus officio* (*z*). In *In re Montgomery, Jones & Co. and Liebenthal & Co.* (*a*) the grounds on which matters could be remitted to an arbitrator for reconsideration were fully dealt with. Apparently the power to remit includes a power to send back the award in order that it may be stated in the form of a special case (*b*). Referring
back award.

Arbitrators under the Lands Clauses Acts have power to state their award in the form of a special case, or to state in the form of a special case for the opinion of the Court any question of law arising in the course of the reference (*c*). Power of
arbitrators
to state a
special case.

(*t*) R. S. C., O. LII. rr. 1—5.

(*u*) R. S. C., O. LXIV. r. 14; *Re Oliver and Scott's Arbitration* (1890), 43 Ch. D. 310; 59 L. J. Ch. 148.

(*x*) *In re Corporation of Huddersfield and Jacomb* (1874), L. R. 10 Ch. 92; 44 L. J. Ch. 96.

(*y*) *In re Keighley & Co. and Durant & Co.*, [1893] 1 Q. B. 405, at p. 409; 62 L. J. Q. B. 105; and see *Murray v. Dalton* (1920), 90 L. J. K. B. 401.

(*z*) *In re Stringer and Riley Bros.*, [1901] 1 K. B. 105; 70 L. J. K. B. 19.

(*a*) (1898), 78 L. T. 406, *per Chitty*, L. J., at p. 408. Cf. *In re Keighley & Co. and Durant & Co.*, [1893] 1 Q. B. 405; 62 L. J. Q. B. 105.

(*b*) *In re Kirkleatham L. B. and Stockton and Middlesbrough Water Board*, [1893] 1 Q. B. 375; A. C. 444; 62 L. J. Q. B. 180; *In re Palmer & Co. and Hosken & Co.*, [1898] 1 Q. B. 131.

(*c*) Ss. 7 and 19, Arbitration Act, 1889; *vide ante*, p. 194.

CHAPTER XVI.

CONVEYANCE OF LANDS.

Conveyance
by owner
absolutely
entitled.

If the owner is absolutely entitled to the interest in lands, in respect of which compensation has been assessed, and is willing and able to make a good title thereto, and to accept the purchase-money when tendered to him, the conveyance of such interest and the payment of the purchase-money are carried out in the ordinary way and present no difficulties. The conveyance may be according to the forms contained in schedules A. and B. of the Lands Clauses Act, 1845 (*a*), or as near thereto as the circumstances of the case may admit, or by deed in any form which the promoters of the undertaking may think fit (*b*). Trustees, with an absolute power of sale, are in the position of owners absolutely entitled, and can convey in exercise of the power of sale. But when the promoters elect to treat with the tenant for life under the Lands Clauses Act, 1845, instead of with the trustees, the purchase is carried out under the powers of the Lands Clauses Act, 1845, and the trustees cannot be called upon to convey under the power (*c*). The same principle applies where the sale has taken place by virtue of powers conferred by the Lands Clauses Act, 1845, and not by virtue of any power under the Settled Land Acts (*d*). Unless the special Act specifically vests the property, the promoters can be compelled to take a conveyance even though they are content to rest their title on the special Act, notice to treat and award (*e*).

Trustees and
tenants
for life.

(*a*) See Appendix, pp. 434, 435.

(*b*) S. 81, L. Cl. Act, 1845. .

(*c*) *Peters v. Lewes and East Grinstead Rail. Co.* (1881), 18 Ch. D. 429; 50 L. J. Ch. 839; *In re Pigott and Great Western Rail. Co.* (1881), 18 Ch. D. 146; 50 L. J. Ch. 679. Cf. *ante*, p. 50.

(*d*) *Re Bentinck and London and North Western Rail. Co.* (1895), 12 Times L. R. 100.

(*e*) *In re Cary-Elwes' Contract*, [1906] 2 Ch. 143, in which case the promoters had stamped a copy of the special Act with the duty payable on the purchase-money and produced it to the Inland Revenue Commissioners under s. 12 of the Finance Act, 1895, as if the special Act had itself vested the property.

The costs of any such conveyance are borne by the promoters, and "include all charges and expenses incurred, on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title" (f).

Costs.

The principle is, that the owner is entitled to costs incurred which have reference to conveyance or title, but not to such costs as are incurred in connection with the ascertainment of price (g), or any other collateral matter (h).

Include costs of conveyance and in reference to title.

The costs, subject to taxation, of a conveyancing counsel (i), and the costs of completing a title to lands conveyed by a charity by the enrolment of the conveyance of substituted lands under the Mortmain Acts (k), are payable by the promoters.

Of conveyancing counsel.
Of completing title to lands of a charity.

The case of *In re Liverpool Improvement Act* (l), overruling *In re South Wales Rail. Co.* (m), decided that costs of an administration *de bonis non*, required by the promoters to be taken out in order that a good title might be acquired, should be paid by the promoters. In *Ex parte Phillips* (n), it was held that where a small portion of the lands to be taken was mortgaged and vested in the trustees of a person whose estate was in course of administration by the Court, the costs of an application to the Court to enable the trustees to realize the mortgaged portion were not payable by the company : but the decision of the Lords Justices on appeal turned on the special circumstances of the case, and on the fact that the contract between the vendors and the promoters precluded the promoters from dealing with the mortgagee, and was silent as to costs.

Of administration.

(f) S. 82.

(g) *Re Hampstead Junction Rail. Co.*, *Ex parte Buck* (1863), 33 L. J. Ch. 79.

(h) *Ex parte Cave* (1856), 26 L. T. O. S. 176; *Re Lietch and Kewney* (1867), 16 L. T. 729; *In re Nash's Estate* (1855), 4 W. R. 111; *Ex parte Keatley* (1890), 25 L. R. Ir. 265.

(i) *In re Spooner's Estate* (1854), 1 K. & J. 220.

(k) *Ex parte Governors of Christ's Hospital* (1864), 10 L. T. 262.

(l) (1868), L. R. 5 Eq. 282; 37 L. J. Ch. 376; followed in *Ex parte Keatley* (1890), 25 L. R. Ir. 265.

(m) (1851), 14 Beav. 418.

(n) (1862), 32 L. J. Ch. 102.

In case of
copyholds.

In the case of *In re Thames Tunnel (Rotherhithe and Ratcliff) Act, 1900 (o)*, the Court of Appeal considered the earlier cases and also the cases of *In re London United Tramways Act, 1900 (p)*, and *In re Bear Island Defence Works and Doyle (q)* (which they commented adversely upon), and stated that the words of section 82 referred to what are known as conveyancing costs only and not to sums which have to be paid to acquire rights. In that case (o) the lands were copyhold, and in order to complete a valid conveyance the vendors obtained, at the request of the acquiring authority, the admission of the customary co-heirs of the last surviving tenant on the Court rolls, a former trustee; it was held that the steward's fees and the costs of admittance of the co-heirs must be borne by the acquiring authority under section 82, but not the lord's fine on admission.

In case of
probate.

Where an owner of leasehold property has entered into a contract to sell his interest to a promoter and dies after the title is accepted but before completion, the promoters are not chargeable under section 82 with the cost of taking out probate of the vendor's will (r).

Costs of ap-
portioning
rents not
included.

Costs incurred in the employment of a surveyor for the purpose of apportioning rent are expenses of ascertaining the price to be paid, and not expenses in connection with the conveyance of land, and are not payable by the promoters under section 82 of the Lands Clauses Act, 1845 (s). A special arrangement should be made.

Costs of
registering
title.

In an Irish case it was held that where the vendor had not registered his title to the lands and the promoters required that to be done, the costs of such registration must be borne by them (t).

Taxation of
costs.

If the promoters and the party entitled to costs do not agree as to the amount thereof, such costs are taxed by one of the taxing masters in the Chancery Division in England upon an order of the Court, to be obtained upon a petition in a summary way by either of the parties. The promoters pay what the master certifies to be due in respect of such costs to the party entitled thereto, or the amount may be recovered in the same way as any other costs payable under an order of the Court, or by distress in the manner

(o) [1908] 1 Ch. 493.

(p) [1906] 1 Ch. 534.

(q) [1903] 1 Ir. R. 164.

(r) *In re Elementary Education Acts, 1870 and 1873*, [1909] 1 Ch. 55.

(s) *Re Hampstead Junction Rail. Co., Ex parte Buck* (1863), 33 L. J. Ch. 79.

(t) *In re Belfast, &c. Rail. Co., Ex parte Gilmore*, [1895] 1 Ir. R. 297.

provided in the Lands Clauses Act, 1845, in other cases of costs (*u*). The expense of taxing the costs is to be paid by the promoters, unless, upon such taxation, one-sixth of the amount of such costs is disallowed (*x*). A company cannot, after paying the costs of conveyance, have the costs of such conveyance taxed under section 83 (*y*).

The taxation under sections 82 and 83 ought to be between the vendor and the promoters, not between the vendor's solicitor and the promoters (*z*).

The ordinary scale charge under the Solicitors' Remuneration Act, 1881, is not applicable to sales of land under the Lands Clauses Act, even where the purchase is by agreement (*a*), but this exception extends only to vendor's costs and not to the costs of the purchaser (*b*). The scale applicable to conveyances of property does not apply to the case of a grant of an easement (*b*). The investment of money produced by a sale under the Lands Clauses Act is not a sale, and the exception in Sched. I., Part I., r. 11, under the Solicitors' Remuneration Act, does not apply (*c*).

Solicitors' scale charges.

If, where the promoters are authorized to enter and take possession of lands, the owner or occupier refuse to give up the possession thereof, the promoters may issue their warrant to the sheriff to deliver possession of the same; upon receipt of such warrant the sheriff delivers possession of such lands accordingly, and the costs as settled by the sheriff are paid by the person refusing to give possession. The amount of such costs may be deducted from the amount of compensation payable to such party or levied by distress warrant (*d*). This section is permissive and not obligatory, and an entry on lands by the promoters is not forcible merely because the owner refuses to allow them to enter. It is only necessary to set the sheriff in motion where it would be unlawful to enter without his intervention, *i.e.*, where the entry could not be effected without force (*e*).

Refusal of owner to give up possession.

(*u*) L. Cl. Act, 1845, ss. 53, 83.

(*x*) S. 83.

(*y*) *In re South Eastern Rail. Co.*, *Ex parte Somerville* (1883), 23 Ch. D. 167; 52 L. J. Ch. 438.

(*z*) *In re County of Middlesex Light Railways Order*, 1903, [1908] W. N. 167.

(*a*) *In re Burdekin*, [1895] 2 Ch. 136; 64 L. J. Ch. 561.

(*b*) *In re Stewart* (1889), 41 Ch. D. 494.

(*c*) *In re Merchant Taylors' Co.* (1885), 30 Ch. D. 28; 54 L. J. Ch. 867.

(*d*) S. 91.

(*e*) *Loosemore v. Tiverton, &c. Rail. Co.* (1882), 22 Ch. D. 25; 52 L. J. Ch. 260, *per Fry, J.*

CHAPTER XVII.

PAYMENT OF COMPENSATION INTO COURT.

Deposit of
purchase-
money or
compensation.

WHERE land is taken from persons having limited interests, and who are only entitled to sell or convey the same under the provisions of the Lands Clauses Act, 1845, or the special Act, or where injury is done to land so held, the amount of purchase-money or compensation when it exceeds a certain sum is deposited under the control of the Chancery Division (*a*).

Sums over
200*l*.

Section 69 of the Lands Clauses Act, 1845, directs payment into the Bank of England, in the name and with the privity of the Paymaster-General (*b*), of all sums amounting to or exceeding 200*l*., which are payable as purchase-money or compensation to owners having limited interests, and who are only entitled to sell or convey under the provisions of that or the special Act. The parties dealt with by section 69 (*c*) are to a large extent the same as those enumerated in section 7 (*d*).

The money is lodged in Court in the Chancery Division, and is placed in the books of the pay office to the credit of "Ex parte the promoters of the undertaking, in the matter of the special Act (citing it)," and words are to be added briefly expressing the nature of the disability to sell and convey by reason of which the money is paid in. These particulars must also be stated in the request for the direction for the lodgment (*e*).

Sums between
20*l*. and 200*l*.

Section 71 of the Lands Clauses Act, 1845, directs that if such purchase-money or compensation is between 20*l*. and 200*l*., it may either be paid into the bank, or to two trustees nominated by the parties entitled to the rents and profits of the land in respect whereof the same is payable, such nomination to be signified by writing under the hands of the party so entitled, and in case of

(*a*) Ss. 69—74, L. Cl. Act, 1845, Appendix, p. 406.

(*b*) See Court of Chancery (Funds) Act, 1872, s. 6.

(*c*) See *Kelland v. Fulford* (1877), 6 Ch. D. 491, 494; 47 L. J. Ch. 94.

(*d*) *Vide ante*, p. 48.

(*e*) S. C. Funds Rules, 1915, r. 39.

the coverture, infancy, lunacy, or other incapacity of the parties entitled, under the hands of their respective husbands, guardians, committees, or trustees.

The liability to deposit the amount of purchase-money or compensation under sections 69 and 71 of the Lands Clauses Act, 1845, is thrown upon the promoters, and an action is maintainable for a writ of mandamus directing them to pay the amount into the bank pursuant to the provisions of the Act (f); and where purchase-money, which should have been deposited, has been paid under protest to a corporation, the corporation has been ordered at the suit of the promoters to deposit the amount for purposes of interim protection (g).

Promoters
liable to
deposit pur-
chase-money
or compensa-
tion.

Sections 69 and 71 are a direction for the safe custody of purchase-money, and do not make the title conditional on a compliance with their provisions. Payment into Court may be dispensed with, where the fund has immediately to be transferred to another account, as where lands of a lunatic are purchased or taken (h).

Title not con-
ditional on
deposit of
purchase-
money.

From the date of deposit interest ceases to run in favour of the vendors (i) unless there is a special contract to pay interest (k).

Interest
ceases to run
after deposit.

Section 72 enacts that, if such purchase-money or compensation does not exceed 20*l.*, the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same is payable, for their own use and benefit, or in case of their coverture, infancy, idiocy, lunacy, or other incapacity, the same shall be paid for their use to their respective husbands, guardians, committees, or trustees.

Sums not ex-
ceeding 20*l.*

The restriction as to coverture is not operative as to women married since 1882, unless the money represents lands in settlement (l).

If, after a re-investment in lands of the money deposited, there is a surplus which does not exceed 20*l.*, an order will be made for

Surplus not
exceeding
20*l.* after re-
investment.

(f) *Barnett v. Great Eastern Rail. Co.* (1868), 18 L. T. 408; *Stone v. Corporation of Yeovil* (1876), 2 C. P. D. 99; 46 L. J. C. P. 137.

(g) *London and North Western Rail. Co. v. Corporation of Lancaster* (1851), 15 Beav. 22.

(h) *In re Milnes* (1875), 1 Ch. D. 28. Cf. *In re London, Brighton and South Coast Rail. Co., Ex parte Earl of Abcrgavenny* (1856), 4 W. R. 315.

(i) *Lewis v. South Wales Rail. Co.* (1853), 22 L. J. Ch. 209.

(k) *Ex parte Earl of Hardwicke* (1852), 1 De G. M. & G. 297.

(l) Married Women's Property Act, 1882, ss. 1 (1), 2, 19. See *Re Drummond and Davie's Contract*, [1891] 1 Ch. 524.

payment to the tenant for life or the party entitled to the rents and profits (*m*). If the surplus exceeds 20*l.*, an order for payment to the tenant for life will not in general be made (*n*).

Deposit is to be considered as realty.

The purchase-money for lands paid into Court under sections 69 and 71 of the Lands Clauses Act, 1845, is to be laid out in the purchase of real estate or in investments of a similar character and does not lose the character of realty (*o*). Where a fund in Court had been forgotten, it was held that, although the corpus of the fund was impressed with the character of realty, the accumulation of dividend passed under a will as personalty (*p*).

Application of deposit.

Prior to the coming in force of the Rules of the Supreme Court, 1883, the application of money deposited under sections 69 and 71 of the Lands Clauses Act, 1845, was ordered by the Court on petition (*q*). Under Order LV. r. 2, sub-sections 1, 2, and 7, of the Rules of the Supreme Court, a great majority of the applications for dealing with deposited money must now be made at chambers (*r*).

Procedure.

Under sub-section 1, all applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter where there has been a judgment or order declaring the rights, or where the title depends only upon proof of the identity, or the birth, marriage, or death of any person, should, as a general rule, be made at chambers and not on petition. This is a general provision, not restricted in any way by sub-sections 2 and 7, and applies to all sums, of whatever amount, deposited under the Lands Clauses Act, 1845, wherever there has been an order made declaring the rights of parties interested in cash or securities (*s*). Under sub-section 2, even where no order

(*m*) *Re Lord Egremont* (1848), 12 Jur. 618; *Ex parte Rector of Loughton, Re London and Birmingham Rail. Co.* (1849), 14 Jur. 102; *Ex parte Vicar of Sheffield* (1904), 68 J. P. 313.

(*n*) *Re Bateman's Estate* (1852), 21 L. J. Ch. 691; *Ex parte Rector of Bredicot* (1848), 17 L. J. Ch. 414. But cf. *Ex parte Barrett* (1850), 19 L. J. Ch. 415.

(*o*) *Re Harrop's Estate* (1857), 26 L. J. Ch. 516; *Re Walker's Estate* (1853), 22 L. J. Ch. 888; *Kelland v. Fulford* (1877), 6 Ch. D. 491; 47 L. J. Ch. 94; *Dearberg v. Letchford* (1895), 72 L. T. 489.

(*p*) *Dixie v. Wright* (1863), 32 Beav. 662. Cf. *Ex parte Ballinrobe and Clasenorris Light Rail. Co. and Kenny*, [1913] 1 Ir. R. 519, as to what words in a deed are sufficient to pass compensation money lodged in Court.

(*q*) S. 70, L. Cl. Act, 1845.

(*r*) Cf. practice under ss. 85 and 87; Annual Practice, 1922, p. 969; *ante*, p. 231.

(*s*) *In re Brandram* (1883), 25 Ch. D. 366; 53 L. J. Ch. 331; *In re Broad-*

has been made, all applications for payment or transfer to any person of any cash or securities standing to the credit of any cause or matter, if the cash does not exceed 1,000*l.*, or the securities do not exceed 1,000*l.* nominal value, are to be disposed of at chambers and not on petition (*t*), unless the Court in its discretion allows procedure by petition (*u*). But a petition ought to be dispensed with wherever it is possible (*x*), and if one is brought where a summons would have been sufficient the costs of a summons only will be allowed (*y*). It is not clear whether the interest is to be considered in reckoning the amount in Court (*z*). But the amount of cash is to be added to the amount of securities in Court in deciding whether to proceed by petition or summons (*a*).

Under sub-section 7, applications for interim and permanent investments and for payment of dividends under the Lands Clauses Act, 1845, except in special cases (*b*), should be made by summons and not by petition (*c*). In case of investments.

Where money had been paid into Court under the Lands Clauses Acts, and a petition for payment out and investment was presented under the Settled Land Act, 1882, it was held that the costs of the petition would be allowed on the ground that under the special circumstances procedure by petition was cheaper than procedure by summons. In such a case the applicant's choice of procedure rests with himself, and he petitions at his own risk (*d*). Laying out money on erecting, altering, or improving buildings has in some

wood's Trusts (1886), 55 L. J. Ch. 646; *Bates v. Moore* (1888), 38 Ch. D. 381; 57 L. J. Ch. 789. But see *In re Rhodes' Will* (1886), 31 Ch. D. 499; 55 L. J. Ch. 477; *In re Hicks, Ex parte North Eastern Rail. Co.* (1894), 63 L. J. Ch. 568.

(*t*) *Ex parte Maidstone and Ashford Rail. Co. Ex parte Balu and Festiniog Rail. Co.* (1883), 25 Ch. D. 168; 53 L. J. Ch. 127; *In re Madgwick* (1883), 25 Ch. D. 371; 53 L. J. Ch. 333; *In re Calton's Will* (1883), 25 Ch. D. 240; 53 L. J. Ch. 329; *In re Broadwood's Trusts* (1886), 55 L. J. Ch. 646.

(*u*) *Re Bethlehem and Bridewell Hospitals* (1885), 30 Ch. D. 541; 54 L. J. Ch. 1143.

(*x*) *In re Arnold*, (1887) W. N. 122.

(*y*) *Ex parte Perpetual Curate of Bilston* (1889), 37 W. R. 460.

(*z*) *In re Finsbury Savings Bank*, (1886) W. N. 150.

(*a*) *In re Haworth*, (1885) W. N. 48.

(*b*) See *In re Stafford's Charity* (1887), 57 L. T. 846; *Re Rector of St. Alban's, Wood Street* (1891), 66 L. T. 51.

(*c*) *Ex parte Mayor of London* (1883), 25 Ch. D. 384; 53 L. J. Ch. 6.

(*d*) *Re Bethlehem and Bridewell Hospitals* (1885), 30 Ch. D. 541; 54 L. J. Ch. 1143; *Re Earl de Grey's Entailed Estate* (1887), 32 S. J. 108.

cases been held not to be an investment of a permanent character within this sub-section (e).

Party entitled to rents and profits should apply.

The applicant, whether by petition or summons, is the party who would have been entitled to the rents and profits of the land in respect of which such money has been deposited, if such lands had not been purchased or taken (f).

Annuitant or remainderman cannot apply.

An annuitant (g) cannot be heard as an applicant, nor a remainderman (h), although he is at the same time plaintiff in an administration suit.

In case of closed burial grounds.

When money has been deposited in respect of disused burial grounds, the person who would have been entitled to the rents and profits if the burial ground still remained open is the party who should apply to the Court for investment of the money deposited (i).

Executor of applicant.

If an applicant dies during the carriage of an order, subsequent proceedings can be taken by his executors (k).

Affidavit necessary.

A petition for the payment or transfer of cash or securities exceeding 1,000*l.*, or 1,000*l.* nominal value, deposited in Court, must be supported by the affidavit required by the Rules of the Supreme Court, O. LII. r. 18, which provides: "In the case of applications under Acts of Parliament, directing the purchase-money of any property sold to be paid into Court, any persons claiming to be entitled to the money so paid in must make an affidavit not only verifying their title, but also stating that they are not aware of any right in any other person, or of any claim made by any other person, to the sum claimed, or to any part thereof, or if the petitioners are aware of any such right or claim, they must in such affidavit state or refer to and except the same." The rule applies also to an application at chambers (l). The

(e) *Re Hargreave's Trust* (1888), 58 L. T. 367. Cf. *Ex parte Jesus College, Cambridge* (1884), 50 L. T. 583, and p. 255, *post*.

(f) S. 70, L. Cl. Act, 1845.

(g) *Ex parte Back* (1828), 2 Y. & J. Ex. 386.

(h) *Nash v. Nash* (1868), 37 L. J. Ch. 927.

(i) *In re St. Pancras Burial Ground* (1866), L. R. 3 Eq. 173; 36 L. J. Ch. 52; *Ex parte Rector of St. Martin's, Birmingham* (1870), L. R. 11 Eq. 23; 40 L. J. Ch. 69; *Ex parte Rector of Liverpool* (1871), L. R. 11 Eq. 15; 41 L. J. Ch. 55; *Ex parte Vicar of St. Botolph, Aldgate*, [1894] 3 Ch. 544; *Re London County Council, Ex parte Pennington* (1901), 84 L. T. 808.

(k) *In re Youl* (1873), L. R. 16 Eq. 107; 42 L. J. Ch. 900; *In re Atkins' Estate* (1875), 1 Ch. D. 82; 45 L. J. Ch. 117.

(l) Cf. Rules under Settled Land Act, 1882, r. 7.

affidavit will be required in almost all cases (*m*), but has been dispensed with on an application by the authorities of an Oxford college (*n*).

If there are several petitioners, it is sufficient if the affidavit is made by one of them (*o*), and one petition is sufficient where it is proposed to deal at the same time with two funds in different branches of the Court (*p*).

One of several petitioners may make affidavit.

Under section 69 of the Lands Clauses Act, 1845, money deposited could only be applied in one of the following methods :—

Application of money deposited.

(1) The purchase or redemption of the land tax, or the discharge of any debt or incumbrance affecting the land in respect of which such money shall have been paid (*q*), or affecting other land settled therewith to the same or the like uses, trusts, and purposes.

(1) In redeeming land tax or discharging incumbrances.

A tenant for life, who had redeemed the land tax, was allowed to reimburse himself out of money deposited (*r*). The redemption of land tax has been treated as a re-investment in other lands, and the promoters are liable to pay costs (*s*).

Redemption of land tax equivalent to re-investment in land.

An existing lease, under which a low rental is reserved, is an incumbrance on land whose value has increased, and purchase-money deposited may be applied in obtaining a surrender (*t*). Where the interest on certain bonds was payable out of a borough fund which consisted in great part of rents and profits of real estate, and where certain tolls belonging to the corporation had been mortgaged, money deposited in respect of lands taken from

Incumbrances.

(*m*) *Ex parte Hollick* (1846), 16 L. J. Ch. 71; *Ex parte Warden of Winchester College* (1865), 14 L. T. 543; *In re Byron's Charity* (1883), 23 Ch. D. 171; 53 L. J. Ch. 152.

(*n*) *Re Magdalen College, Oxford* (1880), 42 L. T. 822.

(*o*) *Re Vale of Neath Rail. Co.*, (1866) W. N. 78; *Re Smith's Leaseholds* (1866), 14 W. R. 949.

(*p*) *In re Lord Arden's Estates* (1875), L. R. 10 Ch. 445; *Re Brouse's Trusts* (1866), 14 L. T. 37; *In re Gore Langton's Estates* (1875), L. R. 10 Ch. 328; 44 L. J. Ch. 405.

(*q*) *Ex parte Rector of Kirksmeaton, In re Hull Railway and Dock Act* (1882), 20 Ch. D. 203; 51 L. J. Ch. 581; *Ex parte London County Council; Ex parte Vicar of Christchurch, East Greenwich*, [1896] 1 Ch. 520; 65 L. J. Ch. 331.

(*r*) *Ex parte Northwick* (1834), 1 Y. & C. Ex. 166.

(*s*) *Ex parte Northwick* (1834), 1 Y. & C. Ex. 166; *Ex parte Trafford* (1837), 2 Y. & C. Ex. 522; *Ex parte Beddoes* (1855), 24 L. J. Ch. 175; *In re Bethlem Hospital* (1875), L. R. 19 Eq. 457; 44 L. J. Ch. 406.

(*t*) *Ex parte Corporation of Sheffield* (1856), 25 L. J. Ch. 587. Cf. *Re London Street, Greenwich* (1888), 57 L. T. 673; *Ex parte Corporation of London* (1868), L. R. 5 Eq. 418; 37 L. J. Ch. 375.

such corporation was allowed to be applied in paying off such bonds and mortgages, as being incumbrances on the corporation estate (*u*). All lands of a corporation are settled upon the same or the like uses, trusts, or purposes (*v*), and the word "settled" has the same meaning as "standing limited" (*x*).

(2) In purchase of other lands.

(2) In the purchase of other lands to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner as the lands in respect of which such money shall have been paid stood settled.

When re-investment in leaseholds permitted.

When lands taken are freehold, and stand limited in strict settlement, a re-investment in leasehold security (*y*), or in an equity of redemption, will not be sanctioned (*z*). A re-investment in leaseholds may be sanctioned where the petitioners are persons absolutely entitled (*a*). If the property taken is leasehold, deposited money can be re-invested in the purchase of the reversion of other leasehold property belonging to the same parties (*b*).

Copyholds.

Under special circumstances, money deposited in respect of freeholds was ordered to be re-invested in copyholds of inheritance (*c*); and a re-investment may be ordered in lands in the Isle of Man (*d*).

Lands in Isle of Man.

Investment in guaranteed railway stock.

An investment in guaranteed railway stock has been treated as a re-investment in land, in order that the income of a lunatic might not be diminished (*e*).

New buildings.

The erection of new buildings is equivalent to a re-investment in lands, if the special circumstances show that their erection will be for the benefit of all parties interested in the estate, and if the remaindermen do not appear and object (*f*). The fees payable to

(*u*) *In re Derby Municipal Estates* (1876), 3 Ch. D. 289.

(*v*) *Ex parte Corporation of Cambridge* (1848), 6 Hare, 30; *Ex parte Bishop of London* (1860), 29 L. J. Ch. 575; *Ex parte Corporation of London* (1868), L. R. 5 Eq. 418; 37 L. J. Ch. 375.

(*x*) *Kelland v. Fulford* (1877), 6 Ch. D. 491; 47 L. J. Ch. 94.

(*y*) *Ex parte Macaulay* (1854), 23 L. J. Ch. 815. But see *Ex parte Trinity College, Cambridge* (1868), 18 L. T. 849.

(*z*) *Ex parte Craven* (1848), 17 L. J. Ch. 215.

(*a*) *In re Rehoboth Chapel* (1875), L. R. 19 Eq. 180; 44 L. J. Ch. 375.

(*b*) *Re Brasher's Trusts* (1858), 6 W. R. 406.

(*c*) *Re Conn's Estate* (1850), 19 L. J. Ch. 376.

(*d*) *In re Taylor's Estate* (1871), 40 L. J. Ch. 454.

(*e*) *In re Buckingham* (1876), 2 Ch. D. 690.

(*f*) *Re Partington's Trusts* (1863), 11 W. R. 160; *Re Incumbent of Whitfield* (1860), 1 J. & H. 610; *Ex parte Rector of Shipton-under-Wychwood* (1871),

architects and surveyors for planning the buildings and superintending their erection are part of the expenses of building, and are not costs, charges, and expenses incidental to the investment (*g*), and therefore are not payable by the promoters.

Applications by universities or colleges for investment in buildings under the Universities and College Estates Acts, 1858 to 1898, require the consent of the Ministry of Agriculture, evidenced by an order under seal (*h*).

Universities
and colleges.

Additions to and improvements of buildings may confer the same benefit to the estate as new buildings (*i*).

Additions to
and improve-
ments of
buildings.
Repairs.

Money spent in repairs is not ordinarily equivalent to a re-investment in lands (*k*), but the application of deposit moneys for this purpose has been allowed in several cases (*l*).

Money deposited has been applied to permanent improvements of an estate (*m*); but in *Drake v. Trefusis* (*n*), James, L. J., says: "We never intended, however, to go further than this, that the expending money in building a house on a vacant piece of ground forming part of the settled property, is in substance the

Permanent
improvement.

19 W. R. 549; *Drake v. Trefusis* (1875), L. R. 10 Ch. 364; *Ex parte Corporation of Liverpool* (1866), L. R. 1 Ch. 596; 35 L. J. Ch. 655; *In re Johnson's Settlements* (1869), L. R. 8 Eq. 348; *In re Leigh's Estate* (1871), L. R. 6 Ch. 887; 40 L. J. Ch. 687; *Ex parte Rector of Gamston* (1876), 1 Ch. D. 477; *In re Earl de Grey's Settled Estate* (1887), 32 S. J. 108; *Ex parte Jesus College* (1884), 50 L. T. 583; *Ex parte Vicar of St. Botolph, Aldgate*, [1894] 3 Ch. 544.

(*g*) *Re Butchers' Co.* (1885), 53 L. T. 491.

(*h*) *Ex parte King's College, Cambridge*, [1891] 1 Ch. 333, 677; 60 L. J. Ch. 508, in which case, counsel appearing for the Board, an order under seal was dispensed with. Cf. also the Universities and Colleges (Emergency Powers) Act, 1915.

(*i*) *In re Speer's Trusts* (1876), 3 Ch. D. 262; *Ex parte Rector of Claypole* (1873), L. R. 16 Eq. 574; 42 L. J. Ch. 776; *In re Leigh's Estate* (1871), L. R. 6 Ch. 887; 40 L. J. Ch. 687; *In re Earl de Grey's Entailed Estate* (1887), 32 S. J. 108; *Ex parte Vicar of St. Botolph, Aldgate*, [1894] 3 Ch. 544.

(*k*) *Drake v. Trefusis* (1875), L. R. 10 Ch. 364; *In re Leigh's Estate* (1871), L. R. 6 Ch. 887; 40 L. J. Ch. 687; *Ex parte Rector of Newton Heath* (1896), 44 W. R. 645. Cf. *In re Nether Stowey Vicarage* (1873), L. R. 17 Eq. 156; *Brunskill v. Caird* (1873), L. R. 16 Eq. 493.

(*l*) *Ex parte Rector of Grimoldby, In re Louth, &c. Rail. Co.* (1876), 2 Ch. D. 225; *In re Aldred's Estate* (1882), 21 Ch. D. 228; 51 L. J. Ch. 942; *Ex parte Vicar of St. Botolph, Aldgate*, [1894] 3 Ch. 544; *In re London County Council, Ex parte Pennington* (1901), 84 L. T. 808.

(*m*) *In re Clitheroe* (1869), 20 L. T. 6; *Re Vicar of Queen's Camel* (1863), 8 L. T. 233.

(*n*) (1875), L. R. 10 Ch. 364. Cf. Settled Land Act, 1882, ss. 22, 32.

same thing as buying a house, and that money to be invested in the purchase of real estate may therefore be properly applied in the erection of new buildings. Repairs and permanent improvements do not come within this principle."

Payment to tenant for life for money spent.

A tenant for life will only be recouped for expenditure which is properly charged on the inheritance (*o*).

(3) Removing or replacing buildings interfered with.

(3) If such money shall be paid in respect of any buildings taken under the authority of the Lands Clauses Act, 1845, or the special Act, or injured by the proximity of the works, in removing or replacing such buildings or substituting others in their stead in such manner as the Chancery Division shall direct (*p*).

Costs payable by promoters.

The costs of such re-investment are payable by the promoters under the Lands Clauses Acts (*q*). Where the special Act is silent as to costs (*r*) the Court has now, under section 5 of the Supreme Court of Judicature Act, 1890, full discretion as to costs, and has jurisdiction to order the promoters to pay such costs (*s*). Where the re-investment is in land, costs may be computed according to the scale fixed by the Solicitors' Remuneration Act, 1881 (*t*).

(4) Payment to party absolutely entitled.

(4) In payment to any party becoming absolutely entitled to such money.

The words "absolutely entitled" mean entitled to his or her own use, as for instance where an infant attains twenty-one, or a married woman becomes discover (*u*).

Trustees with absolute power of sale.

Trustees with an absolute power of sale are absolutely entitled

(*o*) *Williams v. Aylesbury, &c. Rail. Co.* (1874), L. R. 9 Ch. 684; 43 L. J. Ch. 825; *Ex parte Davis* (1858), 27 L. J. Ch. 712; *Re Wight's Devised Estates* (1857), 6 W. R. 718; *In re Leigh's Estate* (1871), L. R. 6 Ch. 887; 40 L. J. Ch. 687.

(*p*) *Re Oxford, &c. Rail. Co., Ex parte Melward* (1860), 29 L. J. Ch. 245; *Ex parte Ministers and Churchwardens of St. John's Church, Fulham* (1857), 28 L. T. O. S. 173; *In re St. Thomas's Hospital* (1863), 11 W. R. 1018; *In re Johnson's Settlements* (1869), L. R. 8 Eq. 348; *Matthews v. Wilson*, (1883) W. N. 111.

(*q*) *Re Kent Coast Rail. Co.* (1862), 7 L. T. 240. Cf. *Drake v. Greaves* (1886), 33 Ch. D. 609; 56 L. J. Ch. 133. *Contra, Re Buckinghamshire Rail. Co.* (1850), 14 Jur. 1065, and *Re Oxford, &c. Rail. Co., Ex parte Melward* (1860), 29 L. J. Ch. 245.

(*r*) *E.g.*, Michael Angelo Taylor's Act (57 Geo. 3, c. xxix.), *post*, p. 350.

(*s*) *In re Fisher*, [1894] 1 Ch. 450; 63 L. J. Ch. 235. *Vide post*, p. 274.

(*t*) *In re Merchant Taylors' Co.* (1885), 29 Ch. D. 209; 30 Ch. D. 28; 54 L. J. Ch. 867.

(*u*) *Kelland v. Fulford* (1877), 6 Ch. D. 491, 495, *per* Jessel, M. R.; 47 L. J. Ch. 94.

as of right within the meaning of this section to the payment out of Court (*x*).

If a trust for sale is not capable of being exercised until after the lifetime of a party, before whose death the petition is brought, an order for payment out cannot be made (*y*).

Trustees of a charity who have full power to sell the charity lands, are persons absolutely entitled (*z*), but unless the trustees have an absolute power of sale, the certificate of the Charity Commissioners is necessary to entitle them to have money in Court paid out to them (*a*). The money may be transferred to the account of the Official Trustees of Charitable Funds, and this will be equivalent to a payment out of Court (*b*). Trustees
charity.

Where a Borough Council had powers under the London Government Act, 1899, to alienate land and apply the proceeds with the sanction of the Local Government Board, and certain of their lands were compulsorily acquired and the purchase price paid into Court, the Local Government Board refusing to give any consent or take any steps with regard to the matter, it was held that the Borough Council could not be considered as persons absolutely entitled and consequently no order for payment out should be made (*c*). Where a highway authority had powers of sale with the consent of the Local
authorities.

(*x*) *In re Hobson's Trusts* (1878), 7 Ch. D. 708; 47 L. J. Ch. 310, is not overruled by *In re Smith* (1888), 40 Ch. D. 386; 58 L. J. Ch. 108 (see as to this *In re Morgan, Smith v. May*, [1900] 2 Ch. 474; 69 L. J. Ch. 735), and has been followed in *In re Sheffield Corporation and St. William's, &c. Schools*, [1903] 1 Ch. 208; 72 L. J. Ch. 71.

(*y*) *In re Horwood's Estate* (1861), 3 Giff. 218; *In re Reaston's Estate* (1872), L. R. 13 Eq. 564; *In re Sowry* (1873), L. R. 8 Ch. 736.

(*z*) *In re Clergy Orphan Corporation*, [1894] 3 Ch. 145; 64 L. J. Ch. 66; *In re Sheffield Corporation and St. William's, &c. Schools*, [1903] 1 Ch. 208; 72 L. J. Ch. 71. Cf. *In re Spurstowe's Charity* (1874), L. R. 18 Eq. 279; 43 L. J. Ch. 512; *In re Cheshunt College* (1856), 8 W. R. 638; *Ex parte Trustees of Tid St. Giles' Charity* (1868), 17 W. R. 758.

(*a*) *In re Faversham Charities* (1861), 5 L. T. 787; *Ex parte Governors, &c. of Norfolk Clergy*, (1882) W. N. 53; *In re Parson of St. Alphage* (1886), 55 L. T. 314; *Ex parte Haberdashers' Co.* (1886), 55 L. T. 758; *In re Mason's Orphanage and London & North Western Rail. Co.*, [1896] 1 Ch. 596; 65 L. J. Ch. 439.

(*b*) *In re Bristol Free Grammar School Estates* (1878), 47 L. J. Ch. 317; *In re Rector of St. Alban's, Wood Street* (1891), 66 L. T. 51.

(*c*) *Ex parte Great Western Rail. Co.* (1909), 74 J. P. 21; overruling *Ex parte Woolwich Borough Council* (1908), 24 Times L. R. 370, where, in connection with the same Act (London Government Act, 1899), an order for payment out had been made. And see *In re Islington Borough Council* (1907), 97 L. T. 78.

Local Government Board under the Sale of Exhausted Parish Lands Act, 1876, the purchase-money was ordered to be paid out of Court on the footing that the highway authority having obtained that approval, would be absolutely entitled to the money (*d*).

Public companies.

A water company has been held absolutely entitled to the purchase-money of land held by it for the purposes of its undertaking, but taken by another public body under compulsory powers (*e*).

Dowress.

A dowress is a person absolutely entitled to her share of the capital money in Court (*f*).

Married woman.

Before payment out to a married woman a joint affidavit of "no settlement" by the husband and wife is required (*g*); unless the Court otherwise directs the separate receipt of a married woman is sufficient (*h*).

Tenant for life.

A tenant for life has been held entitled to money paid in, under section 74, as compensation for not working minerals necessary for the support of a railway, where the minerals were not of such an extent that they could not possibly have been got in his lifetime (*i*). But a tenant for life is not entitled to have paid out to him, under section 69, any part of money paid in by a railway company in respect of minerals under a settled estate, even though the minerals would probably have been worked out during his lifetime (*k*). The true method of apportionment between life tenant and remainderman in these cases is that stated by Chitty, J., in *In re Robinson's Settlement Trusts* (*l*): "If any apportionment had to be made, the right mode of ascertaining the amount of compensation payable to the tenant for life would be, to ascertain the number of years within which the minerals could be worked out, say, for instance, twenty years; then to divide the compensation money into twenty equal parts, and give the tenant for life one of such parts every year. That mode of payment would exactly correspond with his rights in the minerals if the railway company had not intervened" (*m*).

(*d*) *In re Brumby and Frodingham Urban Council* (1904), 69 J. P. 96.

(*e*) *Re Chelsea Waterworks Co.* (1887), 56 L. J. Ch. 640.

(*f*) *In re Hall's Estate* (1870), L. R. 9 Eq. 179; 39 L. J. Ch. 392.

(*g*) For details of practice in the case of married women, see the Annual Practice.

(*h*) Supreme Court Funds Rules, 1915, 63 (*b*).

(*i*) *In re Barrington, Gamlen v. Lyon* (1886), 33 Ch. D. 523. Cf. *Cardigan v. Curzon-Howe* (1898), 14 Times L. R. 550.

(*k*) *In re Robinson's Settlement Trusts*, [1891] 3 Ch. 129.

(*l*) [1891] 3 Ch. 129, at p. 133.

(*m*) This method was approved and applied by Swinfen Eady, J., in *In re*

If the petitioner for payment out of Court of money deposited is a tenant in tail under a settlement, a disentailing deed has been required to be executed in some cases (*n*) and not in others (*o*).

Necessity of disentailing deed.

As to the rights of copyholders, *vide post*, p. 285.

Copyholders.

A party absolutely entitled can, if he so desire, have the money in Court re-invested in lands, at the cost of the promoters (*p*).

Party absolutely entitled can apply for re-investment.

(5) The Universities and College Estates Acts, 1858 to 1898, provide an additional mode of investment of money paid in under the Lands Clauses Acts in respect of university or college lands. Such money cannot be applied in the manner provided by section 2 of the Act of 1858, without the consent of the Ministry of Agriculture (*q*).

(5) University or College lands.

(6) Section 32 of the Settled Land Act, 1882 (*r*), enlarges the number of investments in which money deposited under the Lands Clauses Act, 1845, can be placed. It enacts that money in Court on December 31, 1882, or afterwards paid in, and liable to be laid out in the purchase of lands to be made subject to a settlement, may be applied as capital money arising under the Act. It has been held that the words "subject to a settlement" must be read in reference to the meaning of the word "settled" as used in the 69th section of the Lands Clauses Act, 1845, and the effect of this decision is, in a large number of cases, to enable moneys deposited under section 69 of the Lands Clauses Act, 1845, to be invested in the same way as capital moneys arising under the Settled Land Acts, 1882 to 1890 (*s*).

(6) Settled Land Act, 1882, s. 32.

Fullerton's Will, [1906] 2 Ch. 138, where the question of the lessee's rights to compensation moneys paid into Court for the lessor (a tenant for life) in respect of royalties, the lessee having a right to make up shorts against future royalties, was considered.

(*n*) *In re Butler's Will* (1873), L. R. 16 Eq. 479; *In re Broadwood's Settled Estates* (1876), 1 Ch. D. 438; 45 L. J. Ch. 168; *In re Reynolds* (1876), 3 Ch. D. 61.

(*o*) *In re Row* (1874), L. R. 17 Eq. 300; 43 L. J. Ch. 347; *In re Wood's Settled Estates* (1875), L. R. 20 Eq. 372; *Noiley v. Palmer* (1866), L. R. 1 Eq. 241.

(*p*) *Re Dodd's Estate* (1870), 24 L. T. 542. Cf. *In re Lathropps's Charity* (1866), L. R. 1 Eq. 467; *Re Jones' Trust Estate* (1870), 39 L. J. Ch. 190.

(*q*) *Ex parte King's College, Cambridge*, [1891] 1 Ch. 677; 60 L. J. Ch. 508. *Vide ante*, p. 255.

(*r*) For fuller details, see the treatises dealing with the Settled Land Acts.

(*s*) *In re Byron's Charity* (1883), 23 Ch. D. 171; 53 L. J. Ch. 152; *Kelland v. Fulford* (1877), 6 Ch. D. 491; 47 L. J. Ch. 94; *Ex parte Vicar of Castle Bytham and Midland Rail. Co.*, [1895] 1 Ch. 348; 64 L. J. Ch. 116.

Investment of
capital money
under Settled
Land Act,
1882, s. 21.

When money deposited under section 69 of the Lands Clauses Act, 1845, is liable to be laid out in land to be made subject to a settlement, it may be invested under the Settled Land Acts, 1882 to 1890 (*s*), in any one of the following methods, in addition to those specified in the Lands Clauses Act, 1845 :—

1. In investment on government securities, or on other securities on which the trustees of the settlement are by the settlement or by law authorized to invest trust money of the settlement, or on the security of the bonds, mortgages, or debentures, or in the purchase of the debenture stock of any railway company in Great Britain or Ireland incorporated by special Act of Parliament, and having for ten years next before the date of investment paid a dividend on its ordinary stock or shares, with power to vary the investment into or for any other such securities (*t*).

2. In discharge, purchase, or redemption of incumbrances affecting the inheritance of the settled land, or other the whole estate the subject of the settlement, or of land-tax, rentcharge in lieu of tithe, Crown rent, chief rent or quit rent, charged on or payable out of the settled land (*u*).

3. In payment for any improvement authorized by the Settled Land Acts, 1882 to 1890 (*x*). These Acts specify certain improvements as subjects for investment; but do not authorize investment in repairs or in permanent improvements, other than those specified (*y*).

4. In payment for equality of exchange or partition of settled land.

5. In purchase of the seigniorship of any part of the settled land being freehold land, or in purchase of the fee simple of any part of the settled land being copyhold or customary land.

6. In purchase of the reversion or freehold in fee of any part of the settled land, being leasehold land held for years, or life, or years determinable on life (*z*).

(*s*) For fuller details, see the treatises dealing with the Settled Land Acts.

(*t*) *In re Byron's Charity* (1883), 23 Ch. D. 171; 53 L. J. Ch. 152; *In re Harrop's Trusts* (1883), 24 Ch. D. 717.

(*u*) Cf. notes on L. Cl. Act, 1845, s. 69, *ante*, p. 253.

(*x*) Cf. s. 25, Settled Land Act, 1882; ss. 13, 18, Settled Land Act, 1890; s. 74, sub-s. 1 (*b*), Housing of the Working Classes Act, 1890.

(*y*) Cf. *Drake v. Trefusis* (1875), L. R. 10 Ch. 364.

(*z*) S. 69 of the L. Cl. Act, 1845, would have permitted investment under heads 4, 5 and 6: *In re Derby Municipal Estates* (1876), 3 Ch. D. 289; *Re Brasher's Trusts* (1858), 6 W. R. 406.

7. In purchase of land in fee simple, or of copyhold or customary land, or of leasehold land held for sixty years or more unexpired at the time of purchase, subject or not to any exception or reservation of or in respect of mines or minerals therein, or of or in respect of rights or powers relative to the working of mines or minerals therein, or in other land. This general power of investing in copyholds or leaseholds is not given under the Lands Clauses Act, 1845 (a).

8. In purchase, either in fee simple, or for a term of sixty years or more, of mines and minerals convenient to be held or worked with the settled land, or of any easement, right or privilege convenient to be held with the settled land for mining or other purposes.

9. In payment to any person becoming absolutely entitled or empowered to give an absolute discharge (b). The Court has a discretionary power to order payment to trustees for the sale of settled lands (c).

10. In payment of costs, charges and expenses of or incidental to the exercise of any of the powers, or the execution of any of the provisions of the Act.

11. In any other mode in which money produced by the exercise of a power of sale in the settlement is applicable thereunder.

12. Section 74 (1) (b) of the Housing of the Working Classes Act, 1890, enacts that the improvements on which capital money may be expended enumerated in section 25 of the Settled Land Act, 1882, and referred to in section 30 of that Act, shall, in addition to cottages for labourers, farm servants, and artizans, whether employed on the settled land or not, include any dwellings available for the working classes, the building of which in the opinion of the Court is not injurious to the estate.

Section 23 of the Settled Land Act, 1882, provides that capital money arising under the Act shall not be applied in the purchase of land out of England, unless the settlement expressly authorizes the same. S. 23, Settled Land Act, 1882.

(7) Until the money is applied in one of the above methods, it (7) In interim investment.

(a) *Ex parte Macaulay, In re Lancashire and Yorkshire Rail. Co.* (1854), 23 L. J. Ch. 815.

(b) Cf. s. 69, L. Cl. Act, 1845; *In re Evans' Settlement* (1880), 14 Ch. D. 511. Cf. *Gedye v. Commissioners of Works*, [1891] 2 Ch. 630; 60 L. J. Ch. 587.

(c) *In re Smith, Ex parte London & North Western Rail. Co.* (1888), 40 Ch. D. 386; 58 L. J. Ch. 108. Cf. s. 14, Settled Land Act, 1890.

can be invested (*d*) in the purchase of consols (*e*), or in government or real securities, or, when liable to settlement, under such of the heads authorized by section 21 of the Settled Land Act, 1882, as are applicable to interim investments (*f*), and the interest, dividends and annual proceeds thereof paid to the party who would for the time being have been entitled to the rents and profits of the lands (*g*). When an interim investment under the extended powers of the Settled Land Act, 1882, is more costly than an interim investment in one of the methods specified in the Lands Clauses Act, 1845, any additional costs must be paid by the company (*h*).

The High Court has jurisdiction, under Michael Angelo Taylor's Act (57 Geo. 3, c. xxix.), ss. 84, 89 (*i*), to order payment by a local authority of the costs of an interim investment in consols of purchase-money of land taken under that Act by such local authority (*k*).

In stock
authorized by
R. S. C.,
O. XXII.
r. 17.

It was decided in the Court of Appeal, after a series of conflicting decisions in the Courts of first instance, that money deposited under the Lands Clauses Acts is cash under the control of the Court, and can be invested in any stock authorized by R. S. C., O. XXII. r. 17 (*l*). The same has been held of money in Court on redemption of Three per Cent. Consols, representing money deposited in Court under the Lands Clauses Acts (*m*).

In mortgage
security.

A mortgage, if approved, is a form of interim investment (*n*). In the case of *In re Flemon's Trusts* (*o*), James, V.-C., in authorizing an interim investment on mortgage security, imposed as a condition that the company should not be called upon to pay the costs

(*d*) See Supreme Court Funds Rules, 1915, rr. 71, 74d.

(*e*) See R. S. C., O. XXII. r. 17.

(*f*) *In re Byron's Charity* (1883), 23 Ch. D. 171.

(*g*) S. 70, L. Cl. Act, 1845.

(*h*) *In re Hanbury's Trusts* (1883), 52 L. J. Ch. 687.

(*i*) *Post*, pp. 525, 527.

(*k*) *In re Merceron* (1877), 7 Ch. D. 184; *In re Fisher*, [1894] 1 Ch. 450; 63 L. J. Ch. 235.

(*l*) *Ex parte St. John Baptist College, Oxford*, *In re Metropolitan Rail. Co.* (1882), 22 Ch. D. 93; 51 L. J. Ch. 268. Cf. *Re Brown* (1890), 59 L. J. Ch. 530; *In re Gaselee*, [1901] 1 Ch. 923; 70 L. J. Ch. 441, where the form of order is discussed.

(*m*) *Re Brown* (1890), 59 L. J. Ch. 530.

(*n*) *In re William Smith's Estate* (1870), L. R. 9 Eq. 178. Cf. *Reading v. Hamilton* (1862), 5 L. T. 628.

(*o*) (1870), L. R. 10 Eq. 612; 40 L. J. Ch. 86. Cf. *Re Lomax* (1864), 34 Beav. 294.

of a future investment in lands ; and this course was also adopted by Kay, J., in *Re Gedling Rectory* (p) ; but in the case of *In re Blyth's Trusts* (q), Lord Selborne, L. C., sitting for the M. R., authorized an interim investment on mortgage security, and declined to impose any condition as to the costs of any future permanent investment.

All applications for interim permanent investment and for payment of dividends under the Lands Clauses Act, 1845, should be made at chambers, in accordance with R. S. C., O. LV. r. 2, sub-section 7. Formerly a fresh petition for payment of dividends had to be presented whenever there had been a transmission of interest (r).

Payment of dividends.

Where the deposit is made in respect of the lands of a lunatic, the dividends are payable to his committee, and it is the practice when a new committee is appointed to insert in the order appointing him a direction for the payment to him of the dividends standing to the credit of the lunacy ; and the promoters need not be served upon the application for the order (s).

In case of a lunatic.

Where there was no treasurer, payment of dividends was ordered to the secretary of a charity, and the order was drawn up for payment to the present secretary and to his successors the secretaries for the time being (t).

In case of a charity.

A summons for re-investment in land should not be served on any person entitled in remainder (u) ; but if an application is made for any other purpose under section 69 of the Lands Clauses Act, 1845, a remainderman should be served (x).

Service on remaindermen under s. 69, L. Cl. Act, 1845.

On a summons for payment of income of interim investment under section 70 of the Lands Clauses Act, 1845, it is unnecessary to serve a remainderman, unless an investment of an unusual character is asked for (y).

Under s. 70.

(p) (1885), 53 L. T. 244.

(q) (1873), L. R. 16 Eq. 468. Cf. *In re Sewart's Estate* (1874), L. R. 18 Eq. 278; *In re Nepton's Charity* (1906), 22 Times L. R. 442.

(r) *In re Jolliffe's Estate* (1869), L. R. 9 Eq. 668. See *Ex parte Hordern* (1848), 2 De G. & Sm. 263.

(s) *In re Ryder* (1888), 37 Ch. D. 595; 57 L. J. Ch. 459.

(t) *In re Codrington's Charity* (1874), L. R. 18 Eq. 658. For an order in similar form, cf. *Ex parte Archbishop of Canterbury* (1848), 2 De G. & Sm. 365; *Ex parte Churchwardens and Overseers of Bicester* (1848), 5 Rail. Cas. 702.

(u) *Ex parte Staples* (1852), 21 L. J. Ch. 251.

(x) *In re Leigh's Estate* (1871), L. R. 6 Ch. 387. Cf. *In re Piggis*, [1913] 2 Ch. 326.

(y) *Re Whitting* (1861), 9 W. R. 830; *In re Dowling's Trusts* (1876), 45 L. J. Ch. 568; *In re Webster's Settled Estates* (1854), 2 Sm. & Giff. App. vi.

On incumbrancers under s. 69.

An incumbrancer should be served with a summons for re-investment in lands (*z*), or for payment out of Court (*a*) under section 69 of the Lands Clauses Act, 1845. A lessor who has a right of re-entry in respect of rent due is an incumbrancer within the meaning of the section (*b*). On a summons for interim investment under section 70 of the Lands Clauses Act, 1845, it is unnecessary to serve an incumbrancer (*c*).

Under s. 70.

On trustees.

Trustees, in whom land purchased or taken was vested, should be served in cases where the purchase-money or compensation has been deposited in Court (*d*).

A tenant for life is entitled to be served with a petition by trustees under the Settled Land Acts for payment out of purchase-money of settled estates and to be separately represented (*e*).

On parties to a suit.

When lands purchased or taken are the subject-matter of a suit, parties to the suit should be served with notice of proceedings for the application of the purchase-money or compensation deposited in the Court (*f*).

Not on Ecclesiastical Commissioners.

When the consent of the Ecclesiastical Commissioners is necessary for the application of a fund deposited in Court, their consent should be obtained out of Court; service of the petition on them is unnecessary, and the promoters are not liable to pay the costs of their appearance (*g*).

In case of charities.

Where by a scheme of the Charity Commissioners lands settled to charitable uses were vested in the official trustee of charity lands, and stock settled to like uses was vested in the official trustees of charitable funds, the costs of serving the official trustees were held to be payable by the promoters (*h*). But where the Charity Commissioners had made a scheme for the administration of several

(*z*) *In re Gore Langton's Estates* (1875), L. R. 10 Ch. 328; 44 L. J. Ch. 405; *Wood v. Boucher* (1871), L. R. 6 Ch. 77; 40 L. J. Ch. 112.

(*a*) *In re Halstead United Charities* (1875), L. R. 20 Eq. 48; *Ex parte Jones, In re Artizans', &c. Dwellings Act* (1880), 14 Ch. D. 624.

(*b*) *Re London Street, Greenwich* (1888), 57 L. T. 673.

(*c*) *In re Webster's Settled Estates* (1854), 2 Sm. & Giff. Appendix, vi.; *In re Morris's Settled Estates* (1875), L. R. 20 Eq. 470; 45 L. J. Ch. 63.

(*d*) *Ex parte Metropolitan Rail. Co.* (1868), 16 W. R. 996; *Henniker v. Chafy* (1864), 35 Beav. 124; *Wilson v. Foster* (1859), 28 L. J. Ch. 410; *In re English's Settlement* (1888), 39 Ch. D. 556; 57 L. J. Ch. 1048.

(*e*) *In re Piggin*, [1913] 2 Ch. 326.

(*f*) *Bradshaw v. Fane* (1862), 1 N. R. 159; *Haynes v. Barton* (1866), L. R. 1 Eq. 422; 35 L. J. Ch. 233; *Hore v. Smith* (1849), 14 Jur. 55; *Wilson v. Foster* (1859), 28 L. J. Ch. 410.

(*g*) *Ex parte Bishop of London* (1860), 29 L. J. Ch. 575.

(*h*) *In re Stafford's Charity* (1887), 57 L. T. 846.

funds in Court, and such scheme was binding on all the thirty-two public bodies or corporations in whose names the funds were respectively standing, it was held that the service of the petition on them was unnecessary, and the costs must be disallowed (*i*).

Money paid into Court is not within the London Government Act, 1899, s. 6 (5), and the Ministry of Health is not a proper or necessary party in an application by a local authority for payment out (*k*).

Under
London
Government
Act, 1899.

Unless their interests are in some way specially affected, it is unnecessary for parties served on applications under sections 69 and 70 of the Lands Clauses Act, 1845, to appear, and the question of the costs of such parties is regulated by R. S. C., O. LXV. r. 27 (19): "Where any petition in a cause or matter assigned to the Chancery Division is served, and notice is given to the party served that in case of his appearance in court his costs will be objected to, and accompanied by a tender of costs for perusing the same, the amount to be tendered shall be 1*l.* 10*s.* The party making such payment should be allowed the same in his costs, provided such service was proper, but not otherwise; but this order is without prejudice to the rights of either party to costs, or to object to costs where no such tender is made, or where the Court or judge shall consider the party entitled, notwithstanding such notice or tender, to appear in court. In any other case in which a solicitor of a party served necessarily or properly peruses any such petition, without appearing thereon, he is to be allowed a fee not exceeding the amount aforesaid." This rule is in accordance with the principle of previous decisions (*l*), with a reduction of the amount to be tendered.

Appearance
of parties
served.

The practice as determined by those decisions applies to money paid into Court under the Housing and Town Planning Acts (*m*).

(*i*) *Re Rector of St. Alban's, Wood Street* (1891), 66 L. T. 51; following *Re Prebend of St. Margaret, Leicester* (1864), 10 L. T. 221.

(*k*) *In re Islington Borough Council* (1907), 97 L. T. 78.

(*l*) *In re Gore Langton's Estates* (1875), L. R. 10 Ch. 328; 44 L. J. Ch. 405; *In re Halstead United Charities* (1875), L. R. 20 Eq. 48; *In re Pattison's Estates* (1876), 4 Ch. D. 207; *In re Dowling's Trusts* (1876), 45 L. J. Ch. 568; *Ex parte Jones, In re Artizans', &c. Dwellings Act, 1875* (1880), 14 Ch. D. 624; *Re Ruck's Trusts* (1895), 13 R. 637; but see *In re Piggin*, [1913] 2 Ch. 326.

(*m*) *Post*, Book II., p. 354. The principle of the decision in *Ex parte Jones, In re Artizans', &c. Dwellings Act, 1875* (1880), 14 Ch. D. 624, appears to apply generally.

Practice on applications at chambers.

The cases having reference to the service of petitions are not omitted, since in some cases petitions must still be presented, and the same parties will probably be required to be before the Court although proceedings are taken at chambers (*n*).

Sums exceeding 20*l.* payable under contract to persons not absolutely entitled to be deposited.

If a sum of money exceeding 20*l.* is payable by the promoters, in respect of the taking, using, or interfering with any lands under a contract or agreement with any person who shall not be entitled to dispose of such lands, or of the interest therein contracted to be sold by him absolutely for his own benefit, the same is to be paid into the bank or to trustees; and it is not lawful for any contracting party not absolutely entitled to retain to his own use any portion of the sums so agreed or contracted to be paid for, or in respect of the taking, using, or interfering with any such lands, or in lieu of bridges, tunnels, or other accommodation works, or for assenting to or not opposing the passing of the bill authorizing the taking of such lands; but all such moneys are to be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion or expectancy: provided that the Chancery Division or the trustees, as the case may be, may allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the bank, or to such trustees as aforesaid, as compensation for any injury, inconvenience or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works (*o*).

This does not affect contract between owner and promoters.

This provision does not affect the validity of contracts between an owner and the promoters. The person who has not an absolute estate in the lands, in respect of which the contract in question is made, becomes a trustee of the money paid; and section 73 determines the relationship between him and the reversioneer or remainderman, who is his *cestui que trust* (*p*).

“Contracting party.”

The words “contracting party” are of general application, and are not limited to a person whose lands are taken (*q*).

(*n*) Cf. Settled Land Act Rules, 1882, rr. 2, 7.

(*o*) S. 73, L. Cl. Act, 1845.

(*p*) *Taylor v. Chichester, &c. Rail. Co.* (1870), L. R. 4 H. L. 628; 39 L. J. Ex. 217.

(*q*) *Pole v. Pole* (1865), 2 Dr. & Sm. 420.

The words "any injury, inconvenience, or annoyance" comprise all costs, charges and expenses properly incurred by the tenant for life, subsequently to the passing of the Act, for the purpose of ascertaining the value of lands, or for the protection of the estate, and which the promoters are not liable to pay (*r*); and are wide enough to include personal injury, inconvenience, or annoyance, provided that in fixing the price this has been allowed for, though no particular sum may have been allocated to it (*s*).

A tenant for life has not been allowed the costs of opposing a bill in Parliament (*t*); but it has been held that, independently of section 36 of the Settled Land Act, 1882, the Court has power to direct the payment of such costs out of capital money (*u*), and a rector's parliamentary costs in opposing a bill have been authorized to be paid out of the purchase-money for a churchyard (*x*).

Where part of a manor was taken, it was held that the lord of the manor, who was tenant for life, was not entitled to any part of the purchase-money in court, as representing the fines on the enfranchisement of copyhold lands (*y*).

The rights between successive owners, when purchase-money or compensation has been deposited in respect of any lease or estate less than an estate in fee simple, or in respect of any reversion dependent on any such lease or estate, are adjusted by the Chancery Division, which, on the application of any party interested in the money deposited, has power to order that the same shall be laid out, invested, accumulated and paid in such manner as the said Court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate or reversion in respect of which such money shall have been paid, or as near thereto as may be (*z*).

(*r*) *In re Earl of Berkeley's Will* (1874), L. R. 10 Ch. 56; 44 L. J. Ch. 3; *Re Aubrey's Estate* (1852), 1 W. R. 464; *In re Strathmore Estates* (1874). L. R. 18 Eq. 338.

(*s*) *Ex parte Rector of Little Steeping, Re East Lincolnshire Rail. Co.* (1847), 5 Rail. Cas. 207; *Re Collis' Estate* (1866), 14 L. T. 352; *In re Saunderton Glebe Lands*, [1903] 1 Ch. 480; 72 L. J. Ch. 276.

(*t*) *In re Earl of Berkeley's Will* (1874), L. R. 10 Ch. 56; 44 L. J. Ch. 3.

(*u*) *In re Ormrod's Settled Estate*, [1892] 2 Ch. 318; 61 L. J. Ch. 651.

(*x*) *In re London County Council, Ex parte Pennington* (1901), 84 L. T. 808.

(*y*) *Re Sir Thomas Wilson's Estate* (1863), 32 L. J. Ch. 191.

(*z*) S. 74, L. Cl. Act, 1845. Decisions on s. 34 of the Settled Land Act, 1882, are authorities on this section, the enactments being similar: *Cottrell v. Cottrell* (1885), 28 Ch. D. 628; 54 L. J. Ch. 417.

"Any injury, inconvenience or annoyance."

Costs of opposing bill in Parliament.

Copyhold lands.

Application of money deposited in respect of leases or reversions.

Service of notice on remaindermen.

On application under this section by the owner of a limited estate, parties interested in reversion or remainder should be served with notice, although the interest of the proposed investment of the money will be less than the rent reserved by the lease (a).

Lands of a life owner subject to lease.

Different principles of adjustment must be applied in the case of lands let on lease by a life owner, and in the case of a life interest in leasehold property. When lands are taken subject to existing leases, a tenant for life, or other owner having a limited interest, is entitled to receive from the funds deposited in Court, during the continuance of such leases, so much of the dividends and interest as would correspond to the amount of the rent reserved. Any surplus should be accumulated, and invested as forming part of the value of the reversion (b). The case of *Ex parte Dean and Chapter of Westminster* (c) is no exception to the above rule, since, under the peculiar circumstances of that case, the petitioners were held to be in the position of owners in possession, and not of reversioners.

A life interest in leaseholds.

When leaseholds are settled upon a tenant for life, with limitations over on his death, then, whether the amount to be derived from the investment of the fund deposited would be more or less than the income being derived from the land taken, the owner entitled to such income has a claim to be paid such an annual sum as would exhaust the whole sum deposited at the same date that the lease would expire.

Adjustment as between tenant for life and remainderman.

The Court has adjusted the rights between the tenant for life and reversioners or remaindermen in one of the following ways :—

By purchase of a government annuity, and investment of the residue to be accumulated (d).

By dividing the income and capital each year by the number of years that the lease has to run, and paying the quotient to the

(a) *In re Crane's Estate* (1869), L. R. 7 Eq. 322.

(b) *Ex parte Dean of Gloucester* (1850), 19 L. J. Ch. 400; *Ex parte Dean of Christ Church* (1854), 23 L. J. Ch. 149; *In re Wootton's Estate* (1866), L. R. 1 Eq. 589; 35 L. J. Ch. 305; *In re Mette's Estate* (1869), L. R. 7 Eq. 72; 38 L. J. Ch. 445; *In re Wilkes' Estate* (1881), 16 Ch. D. 597; 50 L. J. Ch. 199, which contains a form of order; *Cottrell v. Cottrell* (1885), 28 Ch. D. 628; 54 L. J. Ch. 417. As to the distribution of compensation money for minerals, see *ante*, p. 258.

(c) (1859), 28 L. J. Ch. 144. Cf. *Ex parte Trustees of St. Thomas's Church Lands, Bristol* (1870), 23 L. T. 135.

(d) *In re Pfleger* (1868), L. R. 6 Eq. 426. This case has not been followed.

tenant for life (e) ; by purchasing an annuity for the same number of years as the lease had to run ; or by referring it to an actuary to say what in each year should be paid to a tenant for life out of income and capital (f).

In *In re Wood's Estate* (g), the tenant for life of renewable leaseholds was not allowed more than the income of the purchase-money deposited ; but this case is no exception to the above rule, as the decision was based on the ground that there had not been a purchase by the promoters of a terminable estate, but a substitution of one property in perpetuity for another property in perpetuity, and that part of the corpus belonging to the remainderman could not be taken away to make good the diminished income of the tenant for life. When a lease had not been renewed through the neglect of trustees, and the rights of the remainderman had been defeated, it was held that the tenant for life had the whole interest in lands in respect of which compensation had been assessed, and was entitled to be paid the whole amount deposited (h).

An annuitant whose annuity is secured on leasehold property is entitled to be paid the annuity in full (i). This is in accordance with the general principle, that the compulsory taking of lands shall not alter the respective claims of persons interested.

Annuity secured on leasehold property.

If, upon deposit in the bank under sections 69, 71 and 73 of the Lands Clauses Act, 1845, of the purchase-money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters, the owner of such lands shall fail duly to convey such lands to the promoters, or as they shall direct, or fail to adduce a good title to such lands to the satisfaction of the promoters, the promoters may, if they think fit, execute a deed poll under their common seal if they be a corporation, or, if they be not a corporation, under the hands and seals of the promoters, or any two of them, containing a description of the lands in respect of which such default has been made, and reciting the purchase or taking thereof by the promoters, and the names of the parties from whom the same have been purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having

After deposit, lands to vest in promoters if owner fail to convey or show good title.

(e) *Littlewood v. Pattison* (1864), 10 Jur. N. S. 875.

(f) *Askew v. Woodhead* (1880), 14 Ch. D. 27; 49 L. J. Ch. 320; approving *In re Phillips' Trusts* (1868), L. R. 6 Eq. 250; followed in *In re Hunt's Estate*, (1884) W. N. 181. Cf. *Re Chamberlain's Trusts* (1866), 10 S. J. 910.

(g) (1871), L. R. 10 Eq. 572; 40 L. J. Ch. 59.

(h) *Re Beaufoy* (1853), 22 L. J. Ch. 430.

(i) *Ex parte Wilkinson* (1843), 19 L. J. Ch. 257.

been made, and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party in question shall vest absolutely in the promoters ; and as against such parties, and all parties on behalf of whom they are enabled to sell and convey, the promoters shall be entitled to immediate possession of such lands (*k*).

Promoters can question title on action of specific performance or for payment of compensation.

In proceedings to enforce the performance of a contract for the purchase of lands, or to enforce payment of the amount due to the owner when lands have been taken or injuriously affected, it is open to the promoters to question the title which the owner has claimed, and on the basis of which the assessment of the purchase-money or compensation has been settled (*l*).

Ss. 76 to 79, L. Cl. Act, 1845.

Sections 76 to 79 of the Lands Clauses Act, 1845, provide for the protection of the promoters when the amount of purchase-money or compensation has been agreed or awarded, but the owner on tender thereof refuses to accept the same, or neglects or fails to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters, or if he refuse to convey or release such lands as directed by the promoters, or if any such owner be absent from the kingdom, or cannot after diligent inquiry be found, or fail to appear in the inquiry before the jury. In such cases the promoters may deposit the purchase-money or compensation in the bank in the name and with the privity of the Paymaster-General, to be placed, except in cases otherwise provided for, to his account there, to the credit of the parties interested in such lands, describing them as far as the promoters of the undertaking can do. Upon such deposit of money and a proper receipt given by the cashier of the bank, the promoters may, if they think fit, execute a deed-poll under their common seal, if they be a corporation, or, if they be not a corporation, under the hands and seals of the promoters, or any two of them, containing a description of the lands in respect of which such deposit has been made, and declaring the circumstances under which, and the names of the parties to whose credit, such deposit has been made ; and such deed-poll is to be stamped with the stamp duty which would have been payable on the conveyance to the promoters of the lands described therein, and thereupon all the estate and interest in such lands of the parties for whose use, and in respect whereof such purchase-money, or compensation has been deposited, vests absolutely in the pro-

(*k*) L. Cl. Act, 1845, s. 75.

(*l*) *Vide ante*, p. 234.

motors, and as against such parties they are entitled to immediate possession of such lands (*m*).

This provision vests in the promoters the actual interest in lands of the party with whom a contract has been entered into, or in respect of whose claim an assessment of purchase-money or compensation has been made, but any other party having an interest in such lands would be at liberty to take proceedings, by action of ejectment or in any other way, against promoters who have taken his property without compliance with the necessary statutory forms (*n*). The section does not vest any interest in the promoters where the claimant, in respect of whose interest an assessment of compensation has been assumed to be made, has a positively bad title, or confesses to no title at all (*o*), nor is it, or section 58, applicable where there is a dispute as to the ownership of the land between two rival claimants; in such a case, unless the parties otherwise agree, the value should be assessed by a jury in the usual way (*p*). The promoters cannot proceed under section 76 without first calling on the owner to make out a title (*q*).

Interest in lands of owner with whom they have treated vested in promoters.

But not other interests.

An action for a mandamus against the promoters to pay money into Court under section 76 of the Lands Clauses Act, 1845, was held to be maintainable under the Common Law Procedure Act, 1854 (*r*).

Mandamus to pay money into Court.

Money deposited under sections 76 and 77 of the Lands Clauses Act, 1845, is, under section 78, directed to be dealt with by the Chancery Division of the High Court upon the petition of any party making claim to the money so deposited, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same: and the Court may order such money to be laid out or invested in the public funds, or may order distribution thereof, or payment

Petition for application of money.

(*m*) Ss. 76 and 77, L. Cl. Act, 1845.

(*n*) *Ex parte Winder* (1877), 6 Ch. D. 696; 46 L. J. Ch. 572. Cf. *Douglas v. London and North Western Rail. Co.* (1856), 3 K. & J. 173; *Gedye v. Commissioners of Works*, [1891] 2 Ch. 630; 60 L. J. Ch. 587.

(*o*) *Douglass v. London and North Western Rail. Co.* (1856), 3 K. & J. 173; *Wells v. Chelmsford L. B.* (1880), 15 Ch. D. 108; 49 L. J. Ch. 827.

(*p*) *Ex parte London and South Western Rail. Co.* (1869), 38 L. J. Ch. 527.

(*q*) *Doe d. Hutchinson v. Manchester, &c. Rail. Co.* (1845), 15 L. J. Ex. 208. Cf. *In re Leeds Grammar School*, [1901] 1 Ch. 228; 70 L. J. Ch. 89.

(*r*) *Barnett v. Great Eastern Rail. Co.* (1868), 18 L. T. 408; but see *contra*, *Douglas v. London and North Western Rail. Co.* (1856), 3 K. & J. 173; and *East London Union v. Metropolitan Rail. Co.* (1869), L. R. 4 Ex. 309; 38 L. J. Ex. 225.

of the dividends thereof, according to the respective estates, titles or interests of the parties making claim to such money or lands, or any part thereof, and may make such other order in the premises as to the Court shall seem fit (*s*).

Procedure by summons.

The procedure is now by summons at chambers, and not by petition, except in the case of sums of over 1,000*l.*; and applies to money paid into Court under any Act whenever passed (*t*).

An incumbrancer can apply.

An incumbrancer can apply under this provision (*u*); but a lessor cannot claim arrears of rent out of money so deposited as compensation for the interest of the lessee (*x*).

Court to decide question of title.

On an application in respect of purchase-money or compensation under section 78 of the Lands Clauses Act, 1845, the Court is called upon to decide the respective estates, title or interests of the parties making claim to the money deposited, or the lands or any part thereof. If the interest in respect of which compensation has been claimed and assessed is greater than the interest to which the petitioners are entitled, the Court will use its own machinery to ascertain the value of the interest to which the petitioners are actually entitled, and will order payment of the residue of the fund in Court to the party who paid it in (*y*). Where, subsequently to a decree of specific performance, a company paid money into Court in respect of the purchase-money on a plea of defective title, the owner was held entitled to apply for payment under section 78, as a means of enforcing the decree already made (*z*), and where the promoters under section 76 paid into Court in respect of mortgaged premises *inter alia* an agreed sum of 250*l.* as compensation for goodwill depending on the personal skill of the mortgagor, it

(*s*) S. 78, L. Cl. Act, 1845.

(*t*) R. S. C., O. LV. r. 2, sub-ss. 1, 2, 7; *Ex parte Mayor of London* (1883), 25 Ch. D. 384; 53 L. J. Ch. 6.

(*u*) *Re Marriage* (1861), 9 W. R. 843; *In re Stead's Mortgaged Estates* (1876), 2 Ch. D. 713; 45 L. J. Ch. 634; *Pile v. Pile, Ex parte Lambton* (1876), 3 Ch. D. 36; 45 L. J. Ch. 841.

(*x*) *In re Dublin Corporation and Baker*, [1912] 1 Ir. R. 498, following *Ex parte Carey, In re Great Southern and Western Rail. Co.* (1847), 10 L. T. (O. S.) 37.

(*y*) *Brandon v. Brandon* (1864), 34 L. J. Ch. 333; *Ex parte Cooper, Re North London Rail. Co.* (1865), 34 L. J. Ch. 373; *Re Perkes' Estate* (1853), 1 Sm. & Giff. 545; *Re Hayne* (1865), 12 L. T. 200; *Re Alston's Estate* (1856), 28 L. T. O. S. 337; *In re Stead's Mortgaged Estates* (1876), 2 Ch. D. 713; 45 L. J. Ch. 634; *Pile v. Pile, Ex parte Lambton* (1876), 3 Ch. D. 36; 45 L. J. Ch. 841.

(*z*) *Galliers v. Metropolitan Rail. Co.* (1871), L. R. 11 Eq. 410; 40 L. J. Ch. 544.

was held that this sum with interest could be recovered in an action by the mortgagor for specific performance (*a*).

After purchase-money had been assessed it was paid into Court, owing to an adverse claim made on behalf of the Crown. The Crown filed an information against the owner, and it was held, on a petition by the owner for payment of the purchase-money, that the petition must stand over until the information had been heard as the Crown could not be brought before the Court under the Lands Clauses Act, 1845, to dispute the petitioner's claim (*b*).

Adverse claim by the Crown.

If, after the deposit of purchase-money or compensation, any question arise respecting the title to the lands in respect of which such purchase-money or compensation has been deposited, the parties respectively in possession of such lands, as being the owners thereof, or in receipt of the rents of such lands, as being entitled thereto at the time of such lands being purchased or taken, are to be deemed to have been lawfully entitled to such lands until the contrary be shown to the satisfaction of the Court; and unless the contrary is shown as aforesaid, the parties in possession, and all parties claiming under them, or consistently with their possession, are to be deemed entitled to the money so deposited, and to the dividends or interests of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly (*c*).

Parties in possession to be deemed : owners until contrary is shown.

A person in possession as occupier claiming the fee simple, in whose favour the Statute of Limitations has run, is within this section (*d*).

Who are within sect. 79.

But a tenant in possession of rents and profits as termor is not within the section, even though he has not paid rent for some years, and the reversioner is unknown; nor will the lapse of time without claim by the reversioner perfect the tenant's title to the fund in Court (*e*).

(*a*) *Cooper v. Metropolitan Board of Works* (1883), 25 Ch. D. 472; 53 L. J. Ch. 109.

(*b*) *In re Manor of Lowestoft and Great Eastern Rail. Co., Ex parte Reeve* (1883), 24 Ch. D. 253; 52 L. J. Ch. 912; *Re Alston's Estate* (1856), 5 W. R. 189. Cf. *In re St. Pancras Burial Ground* (1866), L. R. 3 Eq. 173; 36 L. J. Ch. 52.

(*c*) S. 79, L. Cl. Act, 1845. Cf. *Perry v. Clissold*, [1907] A. C. 73; 76 L. J. P. C. 19.

(*d*) *Ex parte Winder* (1877), 6 Ch. D. 696; 46 L. J. Ch. 572; *Re Evans* (1873), 42 L. J. Ch. 357.

(*e*) *Gedye v. Commissioners of Works*, [1891] 2 Ch. 630; 60 L. J. Ch. 587, doubting *Ex parte Chamberlain* (1880), 14 Ch. D. 323; 49 L. J. Ch. 354. Cf. *Ex parte Hollinsworth* (1871), 24 L. T. 347; *In re Harris, Ex parte London County Council*, [1901] 1 Ch. 931; 70 L. J. Ch. 432.

This applies only to an application to deal with money in Court.

Section 79 is a direction as to the procedure to be adopted on an application for payment of the purchase-money or compensation deposited in Court. In *In re St. Pancras Burial Ground* (f), Wood, V.-C., says :—"The legislature has anxiously provided that the Court shall not, on these occasions of application for the payment of purchase-money, deal with the property in any way whatever which can affect the title, unless it can be shown so clearly as to be beyond question that there must be litigation on the question of title" (g).

Not to a dispute as to title.

Where a title is proved to be doubtful, section 79 does not apply, and the question of title or trust has to be settled, so far as it affects the applicants, by the Court (h).

Costs.

Section 80 of the Lands Clauses Act, 1845, deals with the question of costs in all cases of moneys deposited in the bank under the provisions of that Act, or the special Act, or any Act incorporated therewith (i). Although costs are due to the owner, the Court cannot order them to be paid out of a particular fund appropriated specifically to different purposes (k).

This section applies where lands have been entered upon under section 85 and subsequently an agreement has been made fixing the amount of compensation (l).

Discretion as to costs.

Before the Judicature Acts, the Court of Chancery had no power to give costs in proceedings under statute, except such as the statute authorized (m). Therefore, after transfer of a fund, deposited under a statute, to a suit, the power of the Court to give

(f) (1866), L. R. 3 Eq. 173; 36 L. J. Ch. 52.

(g) *Re Alston's Estate* (1856), 5 W. R. 189; *Re Sterry's* (or *Perry's*) *Estate* (1855), 3 W. R. 561.

(h) *Ex parte Issauchaud* (1839), 3 Y. & C. Ex. 721; *Ex parte Freeman, &c. of Sunderland* (1852), 1 Drew. 184. Cf. *Brandon v. Brandon* (1864), 34 L. J. Ch. 333.

(i) *Ex parte Flower* (1866), L. R. 1 Ch. 599; *Ex parte Morris* (1871), L. R. 12 Eq. 418; 40 L. J. Ch. 543.

(k) *In re Neath and Brecon Rail. Co.* (1874), L. R. 9 Ch. 263.

(l) *Charlton v. Rolleston* (1884), 28 Ch. D. 237; 54 L. J. Ch. 233.

(m) *In re Cherry's Settled Estates* (1862), 31 L. J. Ch. 351 (approved *In re Mills' Estate* (1886), 34 Ch. D. 24; 56 L. J. Ch. 60); *In re Charity Schools of St. Dunstan-in-the-West* (1871), L. R. 12 Eq. 537; *In re Williams' Estate* (1871), L. R. 12 Eq. 488; *In re Land's Trusts and Bristol and Exeter Railway Act* (1857), 4 K. & J. 81; *In re Harrison's Estate* (1870), L. R. 10 Eq. 532; *In re Merceron* (1877), 7 Ch. D. 184; 47 L. J. Ch. 114. The case of *In re Spitalfields' School* (1871), L. R. 10 Eq. 671, has not been followed.

costs in subsequent proceedings was held to be taken away (*n*). The Judicature Act, 1875, and the Rules of the Supreme Court, 1883, placed all costs (subject to certain specified exceptions) of and incident to proceedings in the Supreme Court in the discretion of a Court or judge, but it was held that they did not overrule the provisions of special statutes giving special costs in particular cases (*o*), nor give the Court any power to award costs in cases where the special statute was silent on the point (*p*). The powers of the Court have, however, been extended by section 5 of the Judicature Act, 1890, which enacts: "Subject to the Supreme Court of Judicature Acts and the Rules of the Court made thereunder, and to the express provisions of any statute, whether passed before or after the commencement of this Act, the costs of and incident to all proceedings in the Supreme Court, including the administration of estates and trusts, shall be in the discretion of the Court or judge and the Court or judge shall have full power to determine by whom and to what extent such costs are to be paid." Under this section the Court has power to give costs of and incidental to a petition for payment out under an Act which contains no provisions as to such costs (*q*), and to give costs in the cases under section 80 in which such power is expressly excepted (*r*).

Judicature
Act, 1890,
s. 5.

Costs under section 80 include all reasonable charges and expenses, and the Court will protect the promoters against costs caused or increased by unnecessary or vexatious proceedings of the petitioner.

Promoters not
liable to pay
unnecessary
costs.

Costs of parties who have been unnecessarily served, or who unnecessarily appear, are not payable by the promoters (*s*). Where owing to the complicated nature of the matter a petition is necessary in place of a summons or a second petition or summons is presented by reason of a defect in the first the Court will order the

Of parties
served or ap-
pearing un-
necessarily.

(*n*) *Fisher v. Fisher* (1874), L. R. 17 Eq. 340; 43 L. J. Ch. 262. Cf. *Drake v. Greaves* (1886), 33 Ch. D. 609; 56 L. J. Ch. 133.

(*o*) *Reeve v. Gibson*, [1891] 1 Q. B. 652; 60 L. J. Q. B. 451; following *Hasker v. Wood* (1885), 54 L. J. Q. B. 419.

(*p*) *In re Mills' Estate* (1886), 34 Ch. D. 24; 56 L. J. Ch. 60; approving *In re Cherry's Settled Estates*, 31 L. J. Ch. 351; doubting *Ex parte Mercers' Company* (1878), 10 Ch. D. 481; 48 L. J. Ch. 384; which was followed in *Ex parte St. Katharine's Hospital* (1881), 17 Ch. D. 378; and *In re Lee and Hemingway* (1883), 24 Ch. D. 669.

(*q*) *In re Fisher*, [1894] 1 Ch. 450; 63 L. J. Ch. 235.

(*r*) *In re Schmarr*, [1902] 1 Ch. 326; 71 L. J. Ch. 219.

(*s*) *Vide supra*, p. 265.

promoters to pay the costs unless they were vexatiously increased by the petitioner's acts (*t*).

Owner deprived of costs for vexatious conduct.

Incumbrances created subsequently to payment in.

Where an owner had vexatiously increased the expenses of the promoters by the creation of interests in lands after receiving a notice to treat, he was deprived of his costs by the Court on an application for payment out of a fund deposited (*u*). There is a difference of opinion as to whether costs incurred in relation to incumbrances created subsequently to the deposit of the fund in Court are payable by the company (*x*). The more recent decisions are in favour of the liability of the company to pay the costs, but the costs of the mortgagee, when payable, are limited to 42s., the company also paying the costs of serving the petition on the mortgagee (*y*).

Where a railway company takes land subject to settlement and pays the purchase-money into Court, and a testamentary appointment is subsequently made under the powers contained in the settlement, the costs of all parties, not being costs of adverse litigation, are payable by the company (*z*).

In what cases promoters liable to pay costs.

(1) Costs of the purchase or taking of lands.

Section 80 of the Lands Clauses Act, 1845, provides for payment of costs by the promoters, including therein all reasonable charges and expenses incident thereto (*a*) in the following cases:—

(1) The costs of the purchase or taking (*b*) of lands, or which shall have been incurred in consequence thereof, other than such costs as are in the Lands Clauses Act, 1845, otherwise provided for, and of obtaining the proper orders, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants.

(*t*) *Ex parte Osbaldiston* (1849), 8 Hare, 31; *In re Leigh's Estate* (1871), L. R. 6 Ch. 887; *In re Sanders* (1894), 70 L. T. 755; *In re Jackson* (1894), W. N. 50.

(*u*) *Ex parte Topple* (1871), 25 L. T. 407.

(*x*) *In re Gough's Trusts, Ex parte Great Western Rail. Co.* (1883), 24 Ch. D. 569; *In re Jones' Trust Estate* (1870), 39 L. J. Ch. 190; *contra, In re Olive's Estate* (1890), 44 Ch. D. 316; 59 L. J. Ch. 360. Cf. *Re Bareham* (1881), 17 Ch. D. 329; *Eden v. Thompson* (1863), 2 H. & M. 6.

(*y*) *In re Olive's Estate* (1890), 44 Ch. D. 316, 322; 59 L. J. Ch. 360.

(*z*) *In re Brooshoof's Settlement* (1889), 42 Ch. D. 250; 58 L. J. Ch. 654. Cf. *In re Lye's Estates* (1866), 13 L. T. 664.

(*a*) On an originating summons the costs payable by the promoters must be confined to the costs of obtaining the particular order made, and do not include those in connection with the parts of the summons which fail: *In re Jacobs*, [1908] 2 Ch. 691.

(*b*) *Charlton v. Rolleston* (1884), 28 Ch. D. 237; 54 L. J. Ch. 233.

Costs incurred in apportioning rents for the purpose of ascertaining the value of lands to be taken, and costs occasioned by taking lands subject to a suit, are costs incident to the purchase of lands, and must be paid by the promoters (*c*).

Apportioning rents.

If the lands taken are lands of a lunatic, the costs of an application and subsequent reference to a master are payable by the promoters, and in all subsequent dealings with the lunatic's property, the next of kin should be served, and, if necessary, appear (*d*).

Where lands are property of a lunatic.

(2) Costs of investment in government or real securities, and of obtaining the proper orders, and of the orders for the payment of the dividends and interest of the securities upon which such money shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants.

(2) Costs of investment in government or real securities.

Where money paid into Court can be invested as capital money under sections 22 and 32 of the Settled Land Act, but such investments are more costly than investments authorized under the Lands Clauses Act, 1845, or the special Act, the costs of such investments are payable by the promoters (*e*).

The costs of several interim investments are payable by the promoters, and on an investment in mortgage security after a prior investment in government securities, the Court refused to deal with the question of subsequent costs, or to make a declaration that the investment in mortgage security should be treated as a permanent investment (*f*). The same rule applies in the case of moneys paid into Court under Michael Angelo Taylor's Act (57 Geo 3, c. xxix.) (*g*). The provisions of the Judicature Act, 1890, s. 5, would also apply (*h*).

Costs of several interim investments are payable by promoters.

Where the change of investment is capricious, the promoters

(*c*) *Ex parte Flower* (1866), L. R. 1 Ch. 599; 36 L. J. Ch. 193; *Haynes v. Barton* (1861), 30 L. J. Ch. 804.

(*d*) *Re Taylor* (1849), 1 Macn. & G. 210; *Re Briscoe* (1864), 2 De G. J. & S. 249.

(*e*) *In re Hanbury's Trusts* (1883), 52 L. J. Ch. 687.

(*f*) *In re Nepton's Charity* (1906), 22 Times L. R. 442; *In re Blyth's Trusts* (1873), L. R. 16 Eq. 468; not following *In re Flemon's Trusts* (1870), L. R. 10 Eq. 612; 40 L. J. Ch. 86. Cf. *In re Wm. Smith's Estate* (1870), L. R. 9 Eq. 178; *In re Sewart's Estate* (1874), L. R. 18 Eq. 278; *In re Olive's Estate* (1890), 44 Ch. D. 316; 59 L. J. Ch. 360.

(*g*) *In re Mercer* (1877), 7 Ch. D. 184; 47 L. J. Ch. 114.

(*h*) *Vide ante*, p. 275.

would not be held liable for the costs ; but a re-investment, consequent on the conversion of the National Debt in 1888, was held not to be capricious, but to have been rendered necessary by the legislature (*h*).

All incidental costs.

Costs of broker's commission on investment (*i*) and on sale for payment out (*k*), of necessary applications for payment of dividends to successive owners (*l*), of granting powers of attorney (*m*), of making necessary affidavits (*n*), or of dealing with funds where yearly sales are necessary for the payment of an owner who has limited interests in leaseholds (*o*), are payable by the promoters.

Not costs occasioned by assignment by tenant for life.

If an assignment is made during the life of a tenant for life, the costs of an application for payment of dividends to the assignee must be paid by the applicant (*p*).

(3) Costs of re-investment in lands.

(3) Costs of re-investment in the purchase of other lands, and of obtaining the proper orders, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants (*q*). There is a proviso that the costs of one application only for re-investment in land shall be allowed, unless it shall appear to the Chancery Division of the High Court that it is for the benefit of the parties interested in the said moneys that the same should be invested in the purchase of lands in different sums, and at different times, in which case it is lawful for the Court, if it think fit, to order the costs of any such investment to be paid by the promoters of the undertaking. The costs, charges, and expenses of an investment of a fund, paid into Court by a public authority, in the erection of new buildings, have been ordered to be paid by the public authority (*r*). Additional costs incurred in the settlement of a new charity scheme may be payable by pro-

(*h*) *In re Mercer* (1877), 7 Ch. D. 184; 47 L. J. Ch. 114.

(*i*) *Ex parte Corporation of Trinity House* (1849), 3 Hare, 95; *In re Gaselee*, [1901] 1 Ch. 923; 70 L. J. Ch. 441.

(*k*) *In re Jolliffe's Estate* (1869), L. R. 9 Eq. 668; *In re Magdalen College, Oxford*, [1901] 2 Ch. 786; 70 L. J. Ch. 821.

(*l*) *In re Jolliffe's Estate* (1869), L. R. 9 Eq. 668.

(*m*) *Ex parte Incumbent of Guilden Sutton* (1856), 8 De G. M. & G. 380.

(*n*) *Ex parte Ecclesiastical Commissioners* (1870), 39 L. J. Ch. 623.

(*o*) *In re Long's Estate* (1852), 1 W. R. 226.

(*p*) *Re Byrom* (1859), 7 W. R. 367.

(*q*) *Ex parte Vicar of Sheffield* (1904), 68 J. P. 313.

(*r*) *In re Arden* (1894), 70 L. T. 506.

moters (*s*). Any increased costs arising by reason of the purchase-money exceeding the fund in Court are not so payable (*t*).

The costs of re-investment are such as would be paid on an open contract between vendor and purchaser, and the promoters are not liable to costs of an unusual character or outside the actual re-investment, for which the purchaser may have elected to have become liable (*u*). The costs of a surveyor's fee, where a surveyor is necessary, are included (*x*).

Costs are such as would be paid on an open contract.

If a proposed re-investment in lands is abandoned without sufficient grounds (*y*), or because the Court does not approve of the property proposed to be purchased (*z*), the costs of abortive proceedings are not payable by the promoters. If a proposed re-investment in lands, approved of by the Court, is abandoned owing to a difficulty in title (*a*), or on sufficient grounds (*b*), the promoters must pay the costs of the useless proceedings.

Where proposed re-investment is abandoned;

The promoters are liable to pay costs of re-investment in land, although money paid into Court in respect of leasehold interests is proposed to be invested in freehold (*c*), or money paid in in respect of freehold interests is proposed to be invested in leaseholds (*d*), or lands are resettled to the uses of a will made before the purchase or taking of the lands by the promoters (*e*).

or money deposited for leasehold is re-invested in freehold.

The proviso that the costs of one application only for re-investment in land should be allowed, subject to the discretion of the Court, is a direction that money paid in by the promoters taking lands compulsorily should *primâ facie* be laid out in one sum. If the re-investment of a portion of the balance is shown not to be

One application only for re-investment in lands.

(*s*) *In re Wood Green Gospel Hall Charity*, [1909] 1 Ch. 263; *secus*, *In re St. Paul's Schools, Finsbury* (1883), 52 L. J. Ch. 454. It depends on the facts and the necessity for the new scheme in each case.

(*t*) *In re Clark*, [1906] 1 Ch. 615: the owners found the balance themselves.

(*u*) *Ex parte Christ's Hospital* (1875), L. R. 20 Eq. 605; *Ex parte Trustees of Thavie's Charity*, [1905] 1 Ch. 403.

(*x*) *Ex parte Corporation of London* (1868), L. R. 5 Eq. 418; 37 L. J. Ch. 375.

(*y*) *Ex parte Copley* (1858), 4 Jur. N. S. 297.

(*z*) *In re Hardy's Estate* (1854), 18 Jur. 370. In this case costs of the promoters were ordered to be paid out of the fund.

(*a*) *Re Carney* (1872), 26 L. T. 308; *Ex parte Rector of Holywell* (1865), 2 Dr. & Sm. 463.

(*b*) *Re Vaudrey's Trusts* (1861), 30 L. J. Ch. 885.

(*c*) *In re Parker's Estate* (1872), L. R. 13 Eq. 495; 41 L. J. Ch. 473.

(*d*) *Ex parte Dean of Manchester* (1873), 28 L. T. 184.

(*e*) *Re De Beauvoir* (1860), 29 L. J. Ch. 567.

capricious, but necessary for the benefit of the estate, the promoters are liable to pay the costs (f).

L. Cl. Act,
1845, s. 69.

Section 69 of the Lands Clauses Act, 1845, authorizes the re-investment of money deposited in Court in the purchase or redemption of the land tax, in the discharge of incumbrances, and, where the deposit has been made in respect of buildings, in removing or replacing such buildings or substituting others in their place, as well as in the purchase of other lands.

Settled Land
Act, 1882,
s. 32.

Section 32 of the Settled Land Act, 1882, enacts that where under an Act incorporating or applying wholly or in part the Lands Clauses Consolidation Acts, 1845, 1860 and 1869, or under any other Act, public, local, personal or private, money was in Court on 31st December, 1882, or has since then been paid into Court, and is liable to be laid out in the purchase of land to be made subject to a settlement, then, in addition to any mode of dealing therewith authorized by the Act under which the money is in Court, that money may be invested or applied as capital money arising under the Settled Land Act, on the like terms, if any, respecting costs and other things as nearly as circumstances admit, and (notwithstanding anything in the Act) according to the same procedure as if the modes of investment or application authorized by that Act were authorized by the Act under which the money is in Court.

Therefore under section 69 of the Lands Clauses Act, 1845, and section 32 of the Settled Land Act, 1882, certain re-investments of money deposited in Court are allowed, the costs of which are not specifically dealt with under section 80 of the former Act. These costs will be governed by the same principles as those set out *ante*, p. 274.

If an application for re-investment in one of the ways authorized under the Settled Land Act, 1882, but not under the Lands Clauses Act, 1845, is properly made, the Court will order the promoters to pay all costs properly incurred (g).

(4) Costs of
payment out
of Court.

(4) Costs of the payment out of Court of the principal moneys deposited, or of the securities in which the same are invested, and of the proceedings relating thereto, except such as are occasioned by litigation between adverse claimants ; or in so far as these have

(f) *Brandon v. Brandon* (1862), 32 L. J. Ch. 20; *Re St. Bartholomew's Hospital* (1859), 4 Drew. 425; *Re St. Katherine's Dock Co.* (1844), 3 Rail. Cas. 514; *Ex parte Provost of Eton College* (1842), 6 Jur. 908.

(g) *In re Hanbury's Trusts* (1883), 52 L. J. Ch. 687.

been increased by the fact that the petition also relates to another fund (*h*).

The costs include the allowance of two fees for attendance before the Accountant-General (*i*), the brokerage payable on the sale of the securities (*k*) and the costs of taking out the necessary letters of administration (*l*), and of a necessary disentailing deed (*m*).

Transfer of the fund in Court to an account not referring to the Lands Clauses Act or the special Act has been in some cases held equivalent to payment out of Court, so as to exempt the promoters from paying any costs of subsequent dealings with the fund (*n*). But where the promoters' names are included in the title of the account, it has been held that the change of title does not affect their liability to pay costs (*o*). Transfer of the fund in Court to the account of the official trustees of charitable funds has been held to be equivalent to payment out of Court (*p*).

Transfer to another account.

Re-investment in land may be asked for by a person absolutely entitled, instead of payment out, and the costs of re-investment must be paid by the promoters (*q*).

Section 80 of the Lands Clauses Act, 1845, contains three exceptions to the general liability of the promoters for payment of costs incurred by the owners, where money has been deposited in the bank; but the Court has now by virtue of section 5 of the Judicature Act, 1890, a discretionary power to order payment of costs even in these cases (*r*). The exceptions in section 80 are as follows :—

Exceptions to liability of promoters for costs, subject to overriding discretion of Court.

(1) Where money has been deposited by reason of the wilful refusal of any party entitled thereto to receive the same, or to convey or release the lands in respect whereof the same shall be payable.

(1) If money has been deposited through wilful refusal of owner to receive purchase-money, &c.

(*h*) *In re Lynn and Fakenham Railway Extension Act* (1909), 100 L. T. 432.

(*i*) *In re Butler's Will* (1912), 106 L. T. 673.

(*k*) *In re Magdalen College, Oxford*, [1901] 2 Ch. 786; 70 L. J. Ch. 821.

(*l*) *In re Lloyd and North London Rail. Co.*, [1896] 2 Ch. 397; 65 L. J. Ch. 626; approved *In re Griggs*, [1914] 2 Ch. 547; and see *Ex parte Lurgan U. D. C.*, *In re Kearns*, [1902] 1 Ir. R. 157.

(*m*) *In re Navan and Kingscourt Rail. Co. and Fingall*, [1906] 1 Ir. R. 557.

(*n*) *Melling v. Bird* (1853), 22 L. J. Ch. 599; *Brown v. Fenwick* (1866), 35 L. J. Ch. 241; *Prescott v. Wood* (1868), 37 L. J. Ch. 691; *Nock v. Nock*, (1879) W. N. 125.

(*o*) *Drake v. Greaves* (1886), 33 Ch. D. 609; 56 L. J. Ch. 133.

(*p*) *In re Bristol Free Grammar School Estates* (1878), 47 L. J. Ch. 317; *Re Rector of St. Alban's, Wood Street* (1891), 66 L. T. 51.

(*q*) *Re Jones' Trust Estate* (1870), 39 L. J. Ch. 190.

(*r*) *In re Schmarr*, [1902] 1 Ch. 326; 71 L. J. Ch. 219.

Meaning of
the word
"wilful."

The word "wilful" means "capricious" (*s*), and if there is a fair ground of objection (*s*), or a *bonâ fide* legal doubt (*t*), or an inability to clear off incumbrances exceeding the value of the lands proposed to be taken (*u*), the conduct of the owner does not bring him within this exception as to costs. Where an owner had refused to accept the tender of purchase-money, because it did not include costs incurred by him, costs of a petition for payment out were refused as against the promoters, and the petitioner was ordered to pay the costs of the promoters for calling in the sheriff to get possession (*x*).

(2) Through
wilful neglect
to make a
good title.

(2) Where money has been deposited by reason of the wilful neglect (*y*) of any party to make out a good title to land required.

When the Court is called upon to construe the trusts of a will under which the owner's title is doubtful, there is no wilful neglect to make out a good title to the land required (*z*).

(3) Promoters
not liable for
costs caused
by adverse
litigation.

(3) Costs occasioned by litigation between adverse claimants are excepted from the provisions of section 80.

Litigation to
be hostile.

Adverse litigation arises where different parties set up adverse titles to the estate. If there is an actual *litis contestatio*, as where an action for ejectment is brought by one claimant against another (*a*), or where a petition is presented to the Court for the purpose of deciding adverse claims (*b*), or where, owing to adverse claims, the purchase-money has been paid into Court (*c*), costs so occasioned are not payable by the promoters.

Not for
purpose of
getting
opinion of
the Court.

Costs of proceedings taken for the purpose of getting the opinion of the Court on the construction of doubtful claims are not within

(*s*) *Re Windsor, &c. Rail. Co.* (1849), 12 Beav. 522. Cf. *In re Birkbeck, &c. Society* (1883), 24 Ch. D. 119; 52 L. J. Ch. 777; *In re Leeds Grammar School*, [1901] 1 Ch. 228; 70 L. J. Ch. 89; *Re Jones and Cardiganshire C. C.* (1913), 57 S. J. 374.

(*t*) *Ex parte Bradshaw, In re East and West India Dock Co.* (1848), 17 L. J. Ch. 454; *Ex parte Dashwood* (1857), 26 L. J. Ch. 299.

(*u*) *Re Divers* (1855), 1 Jur. N. S. 995.

(*x*) *Re Turner's Estate* (1862), 5 L. T. 524. Cf. *In re Schmarr*, [1902] 1 Ch. 326, 331; 71 L. J. Ch. 219.

(*y*) Cf. *In re Dublin Corporation, Ex parte Dowling* (1881), 7 L. R. Ir. 173; *In re Birkbeck Freehold Land Society* (1883), 24 Ch. D. 119; 52 L. J. Ch. 777.

(*z*) *Re Woodburn's Trust* (1866), 13 L. T. 237.

(*a*) *Ex parte Palmer* (1849), 13 Jur. 781.

(*b*) *Ex parte Cooper, In re North London Rail. Co.* (1865), 34 L. J. Ch. 373; *Ex parte Yates* (1869), 20 L. T. 940.

(*c*) *Re English* (1865), 13 W. R. 932; *Hood v. West Ham Corporation* (1910), 74 J. P. 179.

the exception, and parties are entitled to have their rights ascertained, if there is no question of hostile litigation (*d*).

The cost of inquiries for the purpose of distributing a fund, as for instance the cost of settling the amount due on a mortgage, are not costs occasioned by the litigation of adverse claimants, and are payable by the promoters (*e*). So also the costs of obtaining letters of administration to the estates of deceased beneficiaries were ordered to be paid by the promoters (*f*).

(4) The promoters seem not to be liable for costs occasioned through the neglect of persons entitled to the capital or income of the funds in Court. In the case of *In re J. Clarke's Estate* (*g*), a fund in Court exceeding 500*l.*, representing the purchase-moneys of settled lands taken by a railway company, had not been dealt with for fifteen years; and it was held that the promoters were not liable for the costs consequent on the delay of the tenant for life, which had necessitated the intervention of the official solicitor (*h*).

(4) Nor for costs due to delay by persons entitled.

When the fund in Court has been deposited by several promoters, the costs of an application for payment out are borne by the promoters equally, and it makes no difference that there is a great inequality in the amount which the promoters have respectively deposited (*i*), except as to the surveyor's fee (*k*) and the *ad valorem*

Costs where fund deposited by several promoters.

(*d*) *Re Tookey's Trusts* (1852), 21 L. J. Ch. 402; *Re Gregson's Trusts* (1864), 34 L. J. Ch. 41; *Eden v. Thompson* (1863), 2 H. & M. 6; *Brandon v. Brandon* (1864), 34 L. J. Ch. 333; *In re Clergy Orphan Corporation*, [1894] 3 Ch. 145; 64 L. J. Ch. 66. So where, owing to the complicated nature of a settlement, the matter was ordered to proceed by petition and not summons, it was held that the promoters must bear the costs: *In re Jackson*, (1894) W. N. 50.

(*e*) *Askew v. Woodhead* (1880), 14 Ch. D. 27; 49 L. J. Ch. 320; *In re Bareham* (1881), 17 Ch. D. 329. Cf. *In re Olive's Estate* (1890), 44 Ch. D. 316; 59 L. J. Ch. 360.

(*f*) *In re Lloyd and North London Rail. Co.*, [1896] 2 Ch. 397; 65 L. J. Ch. 626.

(*g*) (1882), 21 Ch. D. 776; 52 L. J. Ch. 88.

(*h*) Under the Orders and Rules then in force.

(*i*) *Ex parte Bishop of London* (1860), 2 De G. F. & J. 14; *In re Leigh's Estate* (1867), L. R. 6 Ch. 887; 40 L. J. Ch. 687; *Ex parte Corporation of London* (1868), L. R. 5 Eq. 418; 37 L. J. Ch. 375 (which contains a form of order); *Ex parte Perpetual Curate of Bilston* (1889), 37 W. R. 460; *In re Manchester and Leeds Rail. Co.*, *Ex parte Gaskell* (1876), 2 Ch. D. 360; 45 L. J. Ch. 368. Cf. *Re Rector of St. Alban's, Wood Street* (1891), 66 L. T. 51; but see also *In re Lynn and Fakenham Railway Extension Act* (1909), 100 L. T. 432. The decision of Eve, J., in *Ex parte Emmanuel Hospital* (1908), 24 Times L. R. 261, that the brokerage on sale of funds in Court is to be borne equally and not apportioned, is stated not to be in accordance with the practice on which it is based: Annual Practice, 1922, p. 978.

(*k*) *Ex parte Corporation of London* (1868), L. R. 5 Eq. 418; 37 L. J. Ch. 375.

stamp duty (*l*), which are payable in proportion to the amount paid into Court by each.

In two cases the costs of a petition were ordered to be paid rateably to the amounts contributed (*m*) ; and in the case of *Att.-Gen. v. St. John's Hospital, Bath* (*n*), in which the sums paid in by three companies were 1,244*l.*, 44*l.* and 36*l.* respectively, the costs of the companies paying in the two smaller sums were limited to the sums payable by them if the application had been made by summons instead of by petition.

Where an application is for re-investment in lands of the fund in Court, the surveyor's fee and the *ad valorem* stamp duty are payable by the respondent companies rateably in proportion to the amounts respectively deposited (*o*), and the scale fee payable on the purchase under the Solicitors' Remuneration Act, 1881, may be similarly apportioned (*p*).

Amalgama-
tion of
companies.

Where four different companies took lands belonging to a corporation, and three of such companies subsequently amalgamated, it was held that the costs of a permanent investment of the purchase-moneys deposited should be borne in moieties by the existing companies (*q*).

(*l*) *Ex parte Bishop of London* (1860), 2 De G. F. & J. 14.

(*m*) *Ex parte Christ Church* (1861), 9 W. R. 474; *Ex parte Governors of St. Bartholomew's Hospital* (1875), L. R. 20 Eq. 369.

(*n*) [1893] 3 Ch. 151; 62 L. J. Ch. 707.

(*o*) *Ex parte Bishop of London* (1860), 29 L. J. Ch. 575; *Ex parte Corporation of London* (1868), L. R. 5 Eq. 418; 37 L. J. Ch. 375.

(*p*) *In re Bishopsgate Foundation*, [1894] 1 Ch. 185; 63 L. J. Ch. 167.

(*q*) *Ex parte Corpus Christi College, Oxford* (1871), L. R. 13 Eq. 334; 41 L. J. Ch. 170; *In re Manchester and Leeds Rail. Co.*, *Ex parte Gaskell* (1876), 2 Ch. D. 360; 45 L. J. Ch. 368; not following *In re Maryport Railway Act* (1863), 32 Beav. 397.

CHAPTER XVIII.

COPYHOLD LANDS—COMMON OR WASTE LANDS—LANDS IN MORTGAGE
—RENT-CHARGES—LANDS SUBJECT TO LEASES—LAND TAX AND
POOR'S RATE.

THE Lands Clauses Act, 1845, contains special provisions for dealing with copyhold lands (*a*) (sections 95—98), common or waste lands (sections 99—107), lands subject to mortgage (sections 108—114), lands charged with any rent-service, rent-charge, chief or other rent, or other payment or incumbrance (sections 115—118), and lands subject to leases (sections 119—122), and as to compensation for deficiency in land tax and poor's rate (section 133).

1. Copyhold Lands. Sections 95—98.

Every conveyance to the promoters of any lands of copyhold or customary tenure, or of the nature thereof, must be entered on the rolls of the manor of which the same is held or parcel; and the steward of such manor makes such enrolment on payment of such fees as would be due to him on the surrender of the same lands to the use of a purchaser. A conveyance, when so enrolled, has the like effect in respect of such copyhold or customary lands as if the same had been of freehold tenure (*b*). The promoters are entitled to an acknowledgment by the lord of their right to the production of the documents of title of the manor and of the Court rolls so far as they relate to the lands in question, and to delivery of copies thereof, and to an undertaking by the lord for safe custody (*c*).

The steward of the manor is entitled to the fees which would have been due to him on the surrender of the lands to a purchaser, but not to fees of an admission (*d*).

Copyhold
lands.

Steward
entitled to
fees of
surrender.

(*a*) As to the question of the liability of the promoters to pay costs incidental to the conveyance, see *ante*, p. 245.

(*b*) S. 95, L. Cl. Act, 1845.

(*c*) See *In re Agg-Gardner* (1884), 25 Ch. D. 600; 53 L. J. Ch. 347.

(*d*) *Cooper v. Norfolk Rail. Co.* (1849), 3 Ex. 546; 18 L. J. Ex. 176.

Enfranchise-
ment.

Within three months after the enrolment of a conveyance under section 95, or within one month after the promoters enter upon and make use of the lands for the purposes of the works, whichever shall first happen ; or if more than one parcel of such lands, holden of the same manor, is taken by them, then within one month after the last of such parcels has been so taken or entered on by them, the promoters must procure the whole of the lands holden of such manor so taken by them to be enfranchised, and must for that purpose apply to the lord of the manor whereof such lands are holden, to enfranchise the same, and pay him such compensation in respect thereof as shall be agreed upon, or, failing agreement, shall be determined as in other cases of disputed compensation. In estimating such compensation, the loss in respect of the fines, heriots, and other services payable on death, descent, or alienation, or any other matters which would be lost by the vesting of such copyhold or customary lands in the promoters or by the enfranchisement of the same, are to be allowed for (*e*).

This section casts a duty upon the promoters to procure enfranchisement and upon the lord to enfranchise, and either party can enforce the duty against the other (*f*). The lord can compel the promoters by mandamus to procure the enfranchisement (*g*).

Date as at
which com-
pensation
should be
assessed.

The obligations of the parties are settled as soon as the first of the two events specified in the section occurs, and compensation under this section should be based not on the value of the lands at the date of their enfranchisement, but on their value assessed as within one month after entry by the company or within three months after the enrolment of the conveyance on the Court rolls, whichever should first happen (*h*). Delay by the promoters in applying for enfranchisement within the prescribed period does not affect the amount of the compensation payable for enfranchisement (*i*).

(*e*) S. 96, L. Cl. Act, 1845; the lord is entitled under this section to compensation for loss of quitances: *In re Duke of Northumberland and Mayor, &c. of Tynemouth*, [1909] 2 K. B. 374.

(*f*) *Lowther v. Caledonian Rail. Co.*, [1892] 1 Ch. 73, 81, *per* Lindley, L. J.; 61 L. J. Ch. 108.

(*g*) *S. C.*, at p. 84, *per* Fry, L. J.

(*h*) *In re Marquis of Salisbury and London and North Western Rail. Co.* (1879), reported [1892] 1 Ch. 75 (n.); *Lowther v. Caledonian Rail. Co.*, [1892] 1 Ch. 73, 81.

(*i*) *Lowther v. Caledonian Rail. Co.*, [1892] 1 Ch. 73, 83, 84, *per* Bowen, L. J.; 61 L. J. Ch. 108.

A lord of the manor is not entitled under section 95 to the payment of any fine on the alienation to the promoters, nor under section 96 to any compensation for the loss thereof. The measure of compensation is the loss which the alienation to the promoters occasions to the lord, and this is to be assessed in reference to all payments to which, but for the enfranchisement, he would have been entitled (*k*).

Basis of compensation for enfranchisement.

Until lands which are of customary or copyhold tenure have been enfranchised under the powers of the Lands Clauses Act, 1845, they continue subject to the same fines, rents, heriots, and services as were theretofore payable and of right accustomed (*l*). Proper meaning can only be given to these words if until enfranchisement the lord is entitled to the same fines as would have accrued payable but for the taking of the land by the promoters, so that the lord is entitled to require payment of—or in estimating the compensation payable to him there are to be taken into account—all dropping fines arising between the date fixed for compulsory enfranchisement and the actual enfranchisement (*m*). Where the enfranchisement is not completed within the period laid down by the Act the arbitrator ought to award to the lord such amount by way of interest on the compensation-money, as, together with the actual sums received by way of rents, &c. from the date fixed for enfranchisement by the Act till the time of actual enfranchisement, will make up 4 per cent. on the compensation-money payable in respect of the enfranchisement (*n*).

Until enfranchisement lands continue subject to fines, &c

Such fines, rents, heriots, or services should be assessed on the improved value of the lands (*o*), but do not include any fine on alienation to the promoters (*k*).

If the lord of the manor is a tenant for life, the amount of compensation must be invested for the benefit of the estate, and the Copyhold Acts do not apply (*p*).

(*k*) L. Cl. Act, 1845, s. 95; *Ecclesiastical Commissioners v. London & South Western Rail. Co.* (1854), 14 C. B. 743; 23 L. J. C. P. 177.

(*l*) S. 95.

(*m*) *Lord Leconfield v. London and North Western Rail. Co.*, [1907] 1 Ch. 38; applying *In re Sir T. Wilson's Estate* (1862), 2 J. & H. 619; *In re Marquis of Salisbury and London and North Western Rail. Co.* (1879), [1892] 1 Ch. 75 (n.); and *Lowther v. Caledonian Rail. Co.*, [1892] 1 Ch. 73.

(*n*) *In re Duke of Northumberland and Mayor, &c. of Tynemouth*, [1909] 2 K. B. 374; following *In re Marquis of Salisbury and London and North Western Rail. Co.* (1879), [1892] 1 Ch. 75 (n.).

(*o*) *Lowther v. Caledonian Rail. Co.*, [1892] 1 Ch. 73.

(*p*) *Re Sir T. Wilson's Estate* (1863), 32 L. J. Ch. 191.

Lord to
enfranchise
or promoters
may execute
a deed poll.

Upon payment or tender of the compensation agreed upon or determined, or on deposit thereof in the bank in any of the cases provided for in sections 69, 71 and 73 of the Lands Clauses Act, 1845, the lord of the manor whereof such copyhold or customary lands are holden is to enfranchise such lands, and the lands so enfranchised are for ever thereafter held in free and common socage. In default of such enfranchisement by the lord of the manor, or if he fail to adduce a good title to the satisfaction of the promoters, it is lawful for them if they think fit to execute a deed poll duly stamped in the manner provided in sections 76 and 77 of the Lands Clauses Act, 1845, and thereupon the lands in respect of the enfranchisement whereof such compensation shall have been deposited as aforesaid are deemed to be enfranchised, and are for ever thereafter held in free and common socage (*q*). It would seem that the lands are not completely enfranchised until a deed of enfranchisement has been executed by the lord under this section (*r*).

Apportion-
ment of rent
if a part only
of lands sub-
ject to such
rent is taken.

If any copyhold or customary lands are subject to any customary or other rent, and part only of the land subject to any such rent be required to be taken for the purposes of the special Act, the apportionment of such rent may be settled by agreement between the owner of the lands and the lord of the manor on the one part and the promoters on the other part; in default of agreement, it is to be settled by two justices. The enfranchisement of any copyhold or customary lands, or the apportionment of rents, does not affect in other respects any custom by or under which any such copyhold or customary lands, not taken for the purposes of the works, are held. If any of the lands so required be released from any portion of the rents to which they were subject jointly with any other lands, such last-mentioned lands are charged with the remainder only of such rents; and with reference to any such apportioned rents, the lord of the manor has all the same rights and remedies over the lands to which such apportioned rents have been assigned or attributed as he had previously over the whole of the lands subject to such rents for the whole of such rents (*s*).

(*q*) S. 97, L. Cl. Act, 1845.

(*r*) *Lowther v. Caledonian Rail. Co.*, [1892] 1 Ch. 73, 81, 82; 61 L. J. Ch. 108.

(*s*) S. 98, L. Cl. Act, 1845.

Where lands of copyhold tenure have been taken and the promoters agree with the lord to have the compensation assessed under the Copyhold Act, 1894 (*t*), the procedure will be governed by sections 5—10 of that Act, and in some cases this procedure may be found more convenient than that of the Lands Clauses Acts.

Copyhold
Act, 1894.

2. Common or Waste Lands. Sections 99—107 (*u*).

The purchase-money or compensation payable to the lord of the manor or any persons, other than the commoners, entitled to rights in the soil, subject to commonable or other rights, is agreed upon or determined, and is paid or deposited as in other cases where lands are purchased or taken by the promoters (*x*).

Common or
waste lands.
Compensa-
tion for
rights in
the soil.

Upon payment or tender to the lord of the manor, or such other party as aforesaid, of the compensation, which has been agreed upon or determined, in respect of the right in the soil of any such lands, or on deposit thereof in the bank, such lord of the manor or such other party as aforesaid is to convey such lands to the promoters. Such conveyance has the effect of vesting such lands in the promoters, in like manner as if such lord of the manor or such other parties as aforesaid had been seised in fee simple of such lands at the time of executing such conveyance. In default of such conveyance the promoters may, if they think fit, execute a deed poll duly stamped, and thereupon the lands, in respect of which the amount of compensation has been duly deposited, vest absolutely in the promoters, and they are entitled to immediate possession thereof, subject to the commonable and other rights theretofore affecting the same, until such rights have been extinguished by payment or deposit of compensation (*y*).

Conveyance
to promoters
or execution
by them of a
deed poll.

The compensation to be paid for common lands, or lands of like nature, the right to the soil of which belongs to the commoners, as well as the compensation to be paid for the commonable and other rights in or over common lands, the right in the soil whereof does not belong to the commoners, other than the compensation to the lord of the manor or other party entitled to the soil thereof, may be determined by agreement between the promoters of the undertaking and a committee of the parties entitled to commonable or other rights in such lands (*z*).

Compensa-
tion for
commonable
or similar
rights.

(*t*) 57 & 58 Vict. c. 46.

(*u*) See also *post*, pp. 366, 377.

(*x*) Ss. 99, 100, L. Cl. Act, 1845.

(*y*) S. 100, L. Cl. Act, 1845.

(*z*) S. 101.

**Appoint-
ment of a
committee.**

The committee, not exceeding five in number, is appointed by a majority of the persons present at a meeting of the parties entitled to commonable or other rights over or in such lands conveyed by the promoters, and held at some convenient place in the neighbourhood. Every such meeting is called by public advertisement, and notice of such meeting must, not less than seven days previous to the holding thereof, be affixed upon the door of the parish church where any such meeting is intended to be held, or if there be no such church, upon some other place in the neighbourhood to which notices are usually affixed, and if such lands be parcel or holden of a manor, a like notice must be given to the lord of such manor. The decision of the majority binds the minority and all absent parties (*a*). There is no machinery in the Act for determining what persons are entitled to be present at a meeting under this section (*b*).

**Powers of
committee.**

The committee so chosen has power to enter into an agreement with the promoters for the compensation to be paid for the extinction of such commonable or other rights and all matters relating thereto, for and on behalf of themselves and all other parties interested therein. It is lawful for such committee to receive the compensation to be paid for the extinction of such commonable or other rights, and all matters relating thereto, for and on behalf of themselves and all other parties interested therein; and the receipt of such committee, or any three of them, for such compensation is an effectual discharge for the same. Such compensation, when received, is apportioned by the committee among the several persons interested therein according to their respective interests; but the promoters are not bound to see to the apportionment or to the application of such compensation, nor are they liable for the misapplication or non-application thereof (*c*). If such committee, being appointed, fails to agree with the promoters, the amount of compensation to be paid is determined as in other cases of disputed compensation (*d*).

**Enforcing
committee's
agreement.**

An agreement entered into under section 104 is enforceable by an action for specific performance, and in such an action an order may be made directing the trial before a jury in the King's Bench

(*a*) Ss. 102, 103.

(*b*) *Richards v. De Winton*; *Richards v. Evans*, [1901] 2 Ch. 566; 70 L. J. Ch. 719.

(*c*) S. 104, L. Cl. Act, 1845.

(*d*) S. 105.

Division of the issues of fact as to the existence of common rights (e). On issues of this nature evidence of reputation is admissible (e).

The committee, or, failing them, the Ministry of Agriculture (f) are the proper tribunal to determine who are the persons interested in the compensation money and what are their interests; and in the absence of misconduct the Court has no original power to interfere with the jurisdiction of either body (g). An action against the committee by a person who claimed to be entitled as sole commoner to the whole of the compensation money in Court was dismissed for want of jurisdiction (g).

Application and apportionment of compensation.

If the application or apportionment of the compensation money among the several parties interested involves questions of difficulty, the committee may commence an action for the purpose of obtaining directions (h). Any person interested is entitled to be represented in any proceedings dealing with the compensation money (i), and can proceed against the committee for the purpose of compelling them to distribute the compensation money in such a way that he may receive all the benefit to which he is properly entitled (k). When the commoners consist of the resident freemen of a borough, the existing commoners are not entitled to a division of the *corpus* of the fund among them, but the money must be invested in trust for the freemen from time to time resident, and the income only distributed (l). Commoners are not entitled to share in compensation, unless they can show that the title, in respect of which they claim, is capable of a legal origin (m).

If the majority of the committee are of opinion that the apportionment of the compensation money among the several persons interested cannot be satisfactorily carried into effect, they may

Committee may make application to Ministry of Agriculture.

(e) *Evans v. Merthyr Tydvil U. D. C.*, [1899] 1 Ch. 241; 68 L. J. Ch. 175.

(f) See next page.

(g) *Richards v. De Winton*; *Richards v. Evans*, [1901] 2 Ch. 566; 70 L. J. Ch. 719; affirmed on other grounds, [1903] 1 Ch. 507; 72 L. J. Ch. 269.

(h) *Nash v. Coombs* (1867), L. R. 6 Eq. 51; 37 L. J. Ch. 600.

(i) *Ex parte Mayor of Lincoln* (1852), 21 L. J. Ch. 621.

(k) *Fox v. Amhurst* (1875), L. R. 20 Eq. 403; 44 L. J. Ch. 666. For the principles on which such distribution should be made, cf. *In re Christchurch Inclosure Act* (1888), 38 Ch. D. 520; 57 L. J. Ch. 564; *Att.-Gen. v. Meyrick*, [1893] A. C. 1; 62 L. J. Ch. 313; *Simcoe v. Pethick*, [1898] 2 Q. B. 555; 67 L. J. Q. B. 919.

(l) *Nash v. Coombs* (1867), L. R. 6 Eq. 51; 37 L. J. Ch. 600.

(m) *Austin v. Amhurst* (1878), 7 Ch. D. 689; 47 L. J. Ch. 467.

make application in writing to the Ministry of Agriculture to call a meeting of the parties interested (*n*). If the majority in number and interest of the parties interested resolve that the compensation money shall be apportioned under the provisions of the Inclosure Act, 1854, it is paid into the Bank of England, and the committee is absolutely discharged from all further liability in respect thereof (*o*). The duty of ascertaining the interests of the respective parties and the amount of their respective shares then devolves upon the Ministry of Agriculture or a commissioner appointed by the Ministry, whose award is binding upon all parties (*p*).

Commonable Rights Compensation Act, 1882.

If no committee appointed, compensation fixed by a surveyor.

A further method of dealing with the compensation moneys is provided by the Commonable Rights Compensation Act, 1882 (*q*).

If no effectual meeting of the parties entitled to such commonable or other rights takes place, or if such meeting fails to appoint a committee, the amount of compensation to be paid for the extinction of commonable or other rights is determined by a surveyor, appointed by two justices (*r*).

Upon payment or deposit of compensation to commoners, and execution of a deed poll, lands vest in promoters.

Upon payment or tender to the committee, or any three of them, or, if there be no such committee, upon deposit in the bank of the compensation agreed upon or determined in respect of such commonable or other rights, it is lawful for the promoters, if they think fit, to execute a deed poll duly stamped; and thereupon the lands in respect of which such compensation has been so paid or deposited vest in the promoters freed and discharged from all such commonable or other rights, and they are entitled to immediate possession thereof. The Chancery Division of the High Court may upon application order payment of the money so deposited to a committee duly appointed, or make such other order in respect thereto, for the benefit of the parties interested, as it shall think fit (*s*). This means according to their several rights and respective interests in having an investment of it, and dealing with it in that way (*t*).

(*n*) Inclosure Act, 1852 (15 & 16 Vict. c. 79), s. 22; Inclosure Act, 1854 (17 & 18 Vict. c. 97), s. 15, *post*, p. 467; Board of Agriculture Act, 1889 (52 & 53 Vict. c. 30), s. 11 (1).

(*o*) Inclosure Act, 1854, s. 16.

(*p*) Inclosure Act, 1854, s. 17.

(*q*) 45 Vict. c. 15, *post*, p. 469.

(*r*) S. 106, L. Cl. Act, 1845.

(*s*) S. 107, L. Cl. Act, 1845.

(*t*) *Nash v. Coombs* (1867), L. R. 6 Eq. 51, 58; 37 L. J. Ch. 600.

The mode of ascertaining the amount of compensation payable to commoners prescribed in the Lands Clauses Act, 1845, is directory and not imperative, and specific performance of an agreement will be enforced although this mode has not been followed (*u*). Mode of ascertaining compensation for commoners is directory.

If the promoters take possession of and construct works over common lands without having first ascertained and paid compensation to the commoners, any commoner can maintain an action for disturbance of his commonable rights. A similar action could be maintained against the lord of the manor, and the promoters have no greater rights (*x*). If compensation not paid, action for disturbance of commonable rights is maintainable.

Commoners who have established their claim to a share in the funds deposited in respect of their commonable rights were formerly allowed the sum of 3*l.* 3*s.* or 2*l.* 2*s.* for costs, even when the compensation to be distributed was very small (*y*). Application for the payment of a less amount than 1,000*l.* should now be made at chambers (*z*). Costs.

3. Lands in Mortgage. Sections 108—114.

The promoters may purchase or redeem the interest of the mortgagee of any lands required for the purposes of the special Act, whether they have previously purchased the equity of redemption of such lands or not, and may pay or tender to such mortgagee the principal and interest due on such mortgage, together with his costs and charges, if any, and also six months' additional interest. Thereupon such mortgagee conveys his interest in the lands comprised in such mortgage to the promoters, or as they shall direct. The promoters may give notice in writing to a mortgagee that they will pay off the principal and interest due on such mortgage, at the end of six months, computed from the day of giving such notice; and if they have given any such notice, or if the party entitled to the equity of redemption of any such lands has given six months' notice of his intention to redeem the same, then at the expiration of either of such notices, or at any intermediate period, upon payment or tender by the promoters to the mortgagee of the principal money due on such mortgage, and the interest which Lands in mortgage.
Purchase by promoters of interest of mortgagee.

(*u*) *Bee v. Stafford and Uttoxeter Rail. Co.* (1875), 23 W. R. 868.

(*x*) *Stoneham v. London, Brighton and South Coast Rail. Co.* (1871), L. R. 7 Q. B. 1; 41 L. J. Q. B. 1.

(*y*) *Waterlow (or Waterton) v. Burt* (1870), 39 L. J. Ch. 425; *Fox v. Amhurst* (1875), L. R. 20 Eq. 403; 44 L. J. Ch. 666.

(*z*) *Vide ante*, Chap. XVII., p. 250. R. S. C., O. LV. r. 2, sub-s. 2.

would become due at the end of six months from the time of giving such notice, together with his costs and expenses, if any, such mortgagee is to convey or release his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct (a). If promoters purchase lands from a mortgagor, section 108 does not exonerate the vendor from the duty of giving notice to redeem such mortgage, and interest in lieu of notice is payable by the vendor, and not by the promoters (b).

When mortgaged lands are of less value than money secured thereon.

If mortgaged lands are of less value than the principal, interest, and costs secured thereon, the value of such lands, or the compensation to be made by the promoters in respect thereof, is settled by agreement between the mortgagee of such lands and the party entitled to the equity of redemption thereof on the one part, and the promoters on the other part; or failing agreement (c), is determined as in other cases of disputed compensation, and, being so agreed upon or determined, is paid by the promoters to the mortgagee in satisfaction of his mortgage debt, so far as the same will extend: and upon payment or tender thereof, the mortgagee conveys or releases all his interest in such mortgaged lands to the promoters, or as they shall direct (d).

When part only of mortgaged lands required.

If a part only of mortgaged lands be required for the purposes of the special Act, and if the part so required be of less value than the principal money, interest, and costs secured on such lands, and the mortgagee do not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to release the part so required, then the value of such part (e), and also the compensation, if any, to be paid in respect of the severance thereof, or otherwise, is settled by agreement between the mortgagee and the party entitled to the equity of redemption of such land on the one part, and the promoters on the other; or failing agreement, is determined as in other cases of disputed compensation (e), and being so agreed upon or determined is paid by the promoters of the undertaking to the mortgagee in satisfaction of his mortgage debt, so far as the same will extend (e), and thereupon such mortgagee conveys or releases to them, or as they shall direct,

(a) S. 108, L. Cl. Act, 1845.

(b) *Re Spencer-Bell and London and South Western Rail. Co.* (1883), 33 W. R. 771.

(c) Cf. *R. v. Metropolitan Rail. Co.* (1865), 13 L. T. 444.

(d) S. 110, L. Cl. Act, 1845.

(e) See *Ex parte Strabane R. D. C.*, [1910] 1 Ir. R. 135.

all his interest in such mortgaged lands, the value whereof has been paid. A memorandum of what has been so paid is endorsed on the deed creating such mortgage, and is signed by the mortgagee. A copy of such memorandum is at the same time, if required, to be furnished by the promoters at their expense to the party entitled to the equity of redemption of the lands comprised in such mortgage deed (f).

If in any of the cases aforesaid, upon payment or tender of the compensation due to him, a mortgagee fail to convey or release his interest in such mortgaged lands as directed by the promoters, or if he fail to adduce a good title thereto to their satisfaction, it is lawful for the promoters to deposit in the bank the principal and interest, together with costs, if any, due on such mortgage, and also, if such payment be made before the expiration of six months' notice as aforesaid, such further interest as would at that time become due ; and if they think fit, it is lawful for them to execute a deed poll, duly stamped ; and thereupon all the estate and interest of such mortgagee and of all persons in trust for him, or for whom he may be a trustee, in such lands, vests in the promoters, and they are entitled to immediate possession thereof, in case such mortgagee were himself entitled to such possession (g).

All rights and remedies possessed by the mortgagee against the mortgagor by virtue of any bond or covenant or other obligation, other than the right to lands required for the purposes of the special Act, remain in force in respect of so much of the mortgage debt as shall not have been satisfied by payment or deposit (h).

If in the mortgage deed a time is limited for payment of the principal money thereby secured, and the mortgagee is required to accept payment of his mortgage money or part thereof at a time earlier than the time so limited, the promoters must pay to such mortgagee, in addition to the sum so paid off, all such costs and expenses as are incurred by such mortgagee in respect of, or which are incidental to, the re-investment of the sum so paid off : such costs, in case of difference, are taxed and payment thereof enforced in the manner provided by section 83 of the Lands Clauses Act, 1845, with reference to the costs of conveyances (i). If the rate of interest secured by such mortgage be higher than at the time of the same being so paid off can reasonably be expected to be obtained on re-investing the same, regard being had to the then

Deposit of compensation and vesting of interest of mortgagee in promoters on execution of a deed poll.

All rights against mortgagor reserved.

Compensation to mortgagee if mortgage paid off before time limited in mortgage deed.

(f) S. 112, L. Cl. Act, 1845.

(h) Ss. 111, 113.

(g) Ss. 109, 111, 113.

(i) *Vide ante*, Ch. XVI., p. 245.

current rate of interest, such mortgagee is entitled to receive from the promoters, in addition to the principal and interest secured by the mortgage deed, compensation in respect of the loss to be sustained by him, by reason of his mortgage money being so prematurely paid off; the amount of such compensation to be ascertained in case of difference as in other cases of disputed compensation. Until payment or tender of such compensation the promoters are not entitled, as against such mortgagee, to possession of the mortgaged lands required by them for the purposes of the special Act (*k*).

If interest of mortgagee is not acquired, he is not deprived of his remedies as a mortgagee.

If the promoters enter upon lands by agreement with the mortgagor and proceed to pull down a building without having paid compensation to a mortgagee, or deposited the amount, they will be restrained by injunction (*l*); but where promoters have taken possession of the property under section 85 of the Act and the compensation due to the mortgagor has been fixed at a sum less than that required to pay off the mortgage, the promoters will not be restrained from subsequently proceeding to assess the compensation between themselves and the mortgagee (*m*). A mortgagee, with whom the promoters have not come to an agreement nor dealt under their statutory powers, is not deprived of his ordinary remedies. He has no lien over a fund paid into Court before entry under section 85 for the security of the mortgagor; but in default of payment of the amount of his security, he is entitled to an assignment by the promoters and the owner of the land comprised in his security (*n*).

Mortgage including value of goodwill.

Where the owner of business premises mortgaged them with the machinery and fixtures, it was held that the mortgagee was entitled to a sum which had been awarded in respect of the loss of profits in carrying on the business: and that such sum was in the nature of compensation for the value of the goodwill of the business which passed with the premises (*o*). But where the goodwill depends on the personal skill of the mortgagor in possession, it does not pass

(*k*) S. 114.

(*l*) *Ranken v. East and West India Docks, &c. Rail. Co.* (1850), 12 Beav. 298; 19 L. J. Ch. 153.

(*m*) *Cooke v. London C. C.*, [1911] 1 Ch. 604.

(*n*) *Martin v. London, Chatham and Dover Rail. Co.* (1866), L. R. 1 Ch. 501; 35 L. J. Ch. 795.

(*o*) *Pile v. Pile, Ex parte Lambton* (1876), 3 Ch. D. 36; 45 L. J. Ch. 841; following *Chisum v. Dewes* (1828), 5 Russ. 29.

to a mortgagee of the trade premises (*p*), and the question in each case mainly depends on the terms of the mortgage (*q*).

The rights of mortgagees are not cut down by the special provisions of the above-mentioned sections, so that mortgagees of land with a power of sale are entitled to the rights of owners including the right, where part only of their land is taken, to claim compensation for damage by reason of lands held with the lands taken being injuriously affected (*r*).

4. Rent-charges, Chief-rents, and other incumbrances.

Sections 115—118.

If any difference arise between the promoters and the party entitled to any charge upon any lands required to be taken for the purposes of the special Act, respecting the consideration to be paid for the release of such lands therefrom, or from the portion thereof affecting the lands required for the purposes of the special Act, the same is determined as in other cases of disputed compensation (*s*).

Rent-charges.
Release of
lands from
charges.

If part only of lands subject to any charge or incumbrance be required to be taken for the purposes of the special Act, the apportionment of such charge may be settled by agreement between the party entitled to the charge and the owner of the lands on the one part and the promoters on the other part, or in default of agreement by two justices. If the remaining part of the lands so jointly subject be a sufficient security for such charge, then, with the consent of the owner of the lands so jointly subject, it is lawful for the party entitled to such charge to release therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof (*t*).

Apportion-
ment, if part
only of lands
subject to a
charge
required.

Upon payment or tender of the compensation so agreed upon or determined to the party entitled to any charge, such party executes to the promoters a release of such charge; and if he fail so to do, or if he fail to adduce good title to such charge to the satisfaction of the promoters, it is lawful for them to deposit the amount of such compensation in the bank, and to execute a deed poll, duly

Release by
party entitled
to a charge or
execution of a
deed poll by
promoters.

(*p*) *Cooper v. Metropolitan Board of Works* (1883), 25 Ch. D. 472; 53 L. J. Ch. 109.

(*q*) Cf. *In re South City Market Co., Ex parte Bergin* (1884), 13 L. R. Ir. 245.

(*r*) *R. v. Clerk of the Peace for Middlesex*, [1914] 3 K. B. 259.

(*s*) S. 115, L. Cl. Act, 1845.

(*t*) S. 116; cf. Book II., p. 319.

stamped ; and thereupon the charge or incumbrance, or the portion thereof in respect of which such compensation has been paid, ceases and is extinguished (*u*).

Charge to
continue on
lands not
taken.

If any lands be released from any such charge or incumbrance or portion thereof, to which they were subject jointly with other lands, such last-mentioned lands are alone charged with the whole of such charge, or with the remainder thereof, as the case may be. If, upon any such charge being released, the deed or instrument creating or transferring such charge be tendered to the promoters, they or two of them are required to subscribe, or, if they be a corporation, to affix their common seal to a memorandum of such release indorsed on such deed or instrument, declaring what part of the lands originally subject to such charge has been purchased, and if the lands be released from part of such charge, what proportion of such charge has been released and how much thereof continues payable, or if the lands so required have been released from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith. Such memorandum is made and executed at the expense of the promoters, and is evidence in all Courts and elsewhere of the facts there stated, but not so as to exclude any other evidence of the same facts (*x*).

The Court will authorise the committee of a lunatic to release lands from a rent-charge upon the promoters purchasing in the name of the lunatic a government annuity of the same amount for his life (*y*).

5. Lands subject to Leases. Sections 119—122.

Lands subject
to leases.

Apportion-
ment of rent
if part of
lands under
lease taken.

If a part only of lands comprised in a lease is required for the purposes of the special Act, the rent payable in respect of the lands comprised in such lease is apportioned between the lands so required and the residue of such lands (*z*). The apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters on the other part, or on failure to agree by two justices (*a*): the arbitrator who assesses the compensation payable to the tenant has no power to make the

(*u*) S. 117.

(*x*) S. 118.

(*y*) *In re Brewer* (1876), 1 Ch. D. 409.

(*z*) Cf. Book II., p. 319.

(*a*) S. 119, L. Cl. Act, 1845.

apportionment (*b*). The fact that both landlord and tenant have agreed the apportionment with the promoters does not preclude a counter-notice being given under section 92 (*c*) to take the whole of a house, &c. (*d*).

The lessee is under no obligation to obtain the lessor's licence to assign or his consent to an apportionment, and the absence of such licence or consent is no defence to an action for specific performance (*e*); if the lessor refuses to consent, the promoters must proceed against him to enforce his appearance before the justices (*f*).

Lessee cannot be called upon to get assent of lessor.

Unless money has been deposited in the bank, and section 80 of the Lands Clauses Act, 1845, is applicable, the costs of apportionment are not payable by the promoters (*g*).

Costs.

After apportionment, the lessee, as to all future accruing rent, is liable only to so much as is apportioned in respect of the lands not required for the purposes of the special Act; and as to the lands not required and as against the lessee, the lessor has all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease; and all the covenants and conditions of such lease, except as to the amount of rent to be paid, remain in force with regard to that part of the land which is not required for the purposes of the special Act, in the same manner as they would have done in case such part only of the land had been included in the lease (*h*). The apportioned rent only is payable from the date of the agreement or apportionment, even though no entry has taken place (*i*).

Lessee liable only for rent of lands not taken, and as to such lands all covenants remain in force.

6. Compensation to Taxing Authorities. Section 133.

Section 133 of the Lands Clauses Act, 1845, provides that if the promoters become possessed, by virtue of that or the special Act,

Making good land tax and poor's rate.

(*b*) *Re Ware and Regent's Canal Co.* (1854), 9 Ex. 395.

(*c*) *Ante*, p. 40.

(*d*) *Lavers v. London C. C.* (1905), 21 Times L. R. 695.

(*e*) *Slipper v. Tottenham and Hampstead Junction Rail. Co.* (1867), L. R. 4 Eq. 112; 36 L. J. Ch. 841. Cf. *Williams v. East London Rail. Co.* (1869), 18 W. R. 159.

(*f*) *Slipper v. Tottenham and Hampstead Junction Rail. Co.* (1867), L. R. 4 Eq. 112; 36 L. J. Ch. 841.

(*g*) *Ex parte Flower* (1866), L. R. 1 Ch. 599; 36 L. J. Ch. 193; *Re Hampstead, &c. Junction Rail. Co.*, *Ex parte Buck* (1863), 33 L. J. Ch. 79.

(*h*) S. 119, L. Cl. Act, 1845.

(*i*) *In re Secretary of State for War and Hurley's Contract*, [1904] 1 Ir. R. 354.

of any lands charged with land tax or liable to be assessed to the poor's rate, the promoters shall, until the works shall be completed and assessed to such land tax or poor's rate, be liable to make good the deficiency in the assessments for land tax and poor's rate by reason of the taking or use of the lands for the purposes of the works. The deficiency is to be computed according to the rental at which the lands with any building thereon were valued or rated at the time of the passing of the special Act, and is to be paid on demand by the promoters to the collector of land tax or poor's rate. The promoters may redeem the land tax.

Sect. 133
creates a
parochial
indemnity
during
construction.

The scheme of the section is to create a parochial indemnity during the construction of the works (*j*), and it applies only to works within the parish (*k*). It does not render the promoters liable to parochial rates during the progress of the works, but provides the parish with an alternative compensation until other rateable property is substituted for the property destroyed by the operations of the promoters and no longer (*l*). As soon as the works within the parish are completed and liable to be assessed the parish is compellable to rate them, and cannot proceed under the section (*k*).

Extends to
lands taken
outside the
limits of
deviation.

Where promoters purchased houses outside the limits of deviation in order to obtain the withdrawal of opposition to the passing of the special Act, such houses were dealt with as having been taken for the purposes of the works within this section, and it was held that the promoters must make good any consequent deficiency in the assessment of the houses. It was further held that the promoters could not be heard as against the parish to say that they had no power to acquire the lands in question (*m*).

Effect of
s. 133 on
improvement
schemes.

Where the provisions of the Lands Clauses Acts are incorporated in public improvement schemes the local authority, by which the improvements are carried out, becomes liable for the deficiency in poor rate or land tax occasioned (*n*). Section 133 must be read

(*j*) *Putney Overseers v. London and South Western Rail. Co.*, [1891] 1 Q. B. 440, at p. 443, *per* Bowen, L. J.; 60 L. J. Q. B. 438.

(*k*) *East London Rail. Co. v. Whitechurch* (1874), L. R. 7 H. L. 81; 43 L. J. M. C. 159.

(*l*) *Mayor of London v. St. Andrew's, Holborn* (1867), L. R. 2 C. P. 574; 36 L. J. M. C. 95. Cf. *East London Rail. Co. v. Whitechurch* (1874), L. R. 7 H. L. 81; 43 L. J. M. C. 159.

(*m*) *Putney Overseers v. London and South Western Rail. Co.*, [1891] 1 Q. B. 182, 440; 60 L. J. Q. B. 438.

(*n*) *Mayor of London v. St. Andrew's, Holborn* (1867), L. R. 2 C. P. 574;

in each case as and when it is introduced into the special Act (o). Primarily the section applies only to undertakings which when finished become rateable. But in many cases the land taken passes into new streets and can never again become rateable, and in such cases section 133 must be read as if it said "until the works are completed and such part of them as become assessable property are assessed" (p). Sale of surplus land by a local authority on completion of an improvement scheme is part of the works within the meaning of section 133 (p), and the liability of the local authority continues until the structural parts of the improvement are finished and the surplus land is all sold and has all become assessable (p). But as each part of the land is disposed of and becomes assessable, this will from time to time lessen the deficiency. Consequently the deficiency is to be computed, from time to time, by comparing the assessed value at the passing of the special Act with the rateable value at the time of computation of such of the lands taken as have then become assessable (q).

Since the assessment is to be made on the rental at which the lands or houses taken were valued or rated, it is immaterial, in computing the deficiency, that any of the land or houses were unoccupied at the time of passing the special Act (r), nor can the promoters claim the benefit of a deduction of 25 per cent. made in the rates by way of commission in consideration of their payment by the owners instead of the occupiers of small properties in virtue

Assessment
is on rental
value.

36 L. J. M. C. 95; *Wheeler v. Metropolitan Board of Works* (1869), L. R. 4 Ex. 303; 38 L. J. Ex. 165; *Stratton v. Metropolitan Board of Works* (1874), L. R. 10 C. P. 76; 44 L. J. M. C. 33; *Governors of Poor of Bristol v. Mayor, &c. of Bristol* (1887), 18 Q. B. D. 549; 56 L. J. Q. B. 320 (under the Public Health Act, 1875); *St. Leonard's, Shoreditch, Vestry v. London County Council*, [1895] 2 Q. B. 104; 64 L. J. Q. B. 615 (under the Housing of the Working Classes Act, 1890).

(o) *Governors of Poor of Bristol v. Mayor, &c. of Bristol* (1887), 18 Q. B. D. 549, 561; 56 L. J. Q. B. 320.

(p) *Governors of Poor of Bristol v. Mayor, &c. of Bristol* (1887), 18 Q. B. D. 549, 561; 56 L. J. Q. B. 320. Cf. *Wheeler v. Metropolitan Board of Works* (1869), L. R. 4 Ex. 303; 38 L. J. Ex. 165; *Stratton v. Metropolitan Board of Works* (1874), L. R. 10 C. P. 76.

(q) *Ibid.* Cf. *Putney Overseers v. London and South Western Rail. Co.*, [1891] 1 Q. B. 440; 60 L. J. Q. B. 438, explaining *Stratton v. Metropolitan Board of Works* (1874), L. R. 10 C. P. 76; 44 L. J. M. C. 33.

(r) *Putney Overseers v. London and South Western Rail. Co.*, [1891] 1 Q. B. 440; 60 L. J. Q. B. 438. Cf. *Burruv v. London and South Western Rail. Co.* (1891), 64 L. T. 112.

of an agreement under the Poor Rate Assessment and Collection Act, 1869, s. 3 (*s*).

Where the lands taken are not rateable at the time when the special Act is passed the promoters incur no liability. Thus, if lands in the occupation of his Majesty's Commissioners of Works for public purposes are taken, no deficiency need be made good in respect of such lands (*t*). So also where a street is taken.

Several
schemes in
one Act.

Where several improvement schemes were contained in one schedule to a Provisional Order Confirmation Act, but under headings separately numbered, it was held that each scheme constituted a separate undertaking, and the deficiency in the assessment ought to be calculated on each separate undertaking within the rating area affected by it (*u*).

To what rates
s. 133 applies.

The expression "poor's rate" includes not only the rate actually levied for the relief of the poor, but also the county rate under 15 & 16 Vict. c. 81, s. 26, and the borough rate under the Municipal Corporations Act, 1882 (*x*), inasmuch as these rates are charged upon the poor rate (*y*), but it only includes so much of the general rate leviable under the London Government Act, 1899, s. 10, sub-s. 2, as represents the poor rate or anything chargeable on that rate (*z*).

Different expressions are used in some special Acts with reference to deficiency (*a*). In the London & South Western Railway Act, 1883 (45 & 46 Vict. c. clxxxix.), s. 14, the words "general purposes rate" are used, which have been held to mean any rate in which the great majority of parishioners have a general interest, and to include the metropolitan consolidated rate, the lighting rate, and the public libraries rate (*b*).

(*s*) *St. Leonard's, Shoreditch, Vestry v. London County Council*, [1895] 2 Q. B. 104; 64 L. J. Q. B. 615.

(*t*) *Stratton v. Metropolitan Board of Works* (1874), L. R. 10 C. P. 76; 44 L. J. M. C. 33.

(*u*) *Governors of the Poor of Bristol v. Mayor, &c. of Bristol* (1887), 18 Q. B. D. 549; 56 L. J. Q. B. 320.

(*x*) 45 & 46 Vict. c. 50, s. 145.

(*y*) *Farmer v. London and North Western Rail. Co.* (1888), 20 Q. B. D. 788.

(*z*) *Islington Borough Council v. London School Board*, [1903] 2 K. B. 354; 72 L. J. K. B. 677.

(*a*) Cf. *St. Stephen's, City of London, Churchwardens v. Great Northern and City Rail. Co.* (1902), 86 L. T. 390.

(*b*) *Burruv v. London and South Western Rail. Co.* (1891), 64 L. T. 112.

CHAPTER XIX.

SUPERFLUOUS LANDS.

WHEN lands have become vested in promoters under statutory powers, the nature of the interest acquired is dependent upon the terms of the special Act or Acts under which they have been purchased or taken. In each case a question arises on the construction of the special Act or Acts; but, unless there is some exceptional enactment, promoters are only authorized to purchase or take lands for the purposes of the undertaking which they have powers to construct. When lands have been acquired for an authorized purpose, promoters have the usual proprietary rights (*a*), subject to any special statutory restrictions (*b*): but they have no power to deal with lands so as to incapacitate themselves from carrying out the authorized undertaking (*c*), and section 175 of the Public Health Act, 1875, does not empower the Local

Nature of
interest in
lands acquired
by promoters.

(*a*) *R. v. Leake* (1833), 5 B. & Ad. 469; *Bostock v. North Staffordshire Rail. Co.* (1855), 5 De G. & S. 584; *Caledonian Rail. Co. v. Sprot* (1856), 2 Macq. H. L. (Sc.) 449; *Elliot v. North Eastern Rail. Co.* (1863), 10 H. L. C. 333; 32 L. J. Ch. 402; *Swindon Waterworks Co. v. Wilts and Berks Canal Navigation Co.* (1875), L. R. 7 H. L. 697; 45 L. J. Ch. 638; cf. *Norton v. London and North Western Rail. Co.* (1878), 9 Ch. D. 623; on appeal (1879), 13 Ch. D. 268 (which is not inconsistent); *Bonner v. Great Western Rail. Co.* (1883), 24 Ch. D. 1; *Bayley v. Great Western Rail. Co.* (1884), 26 Ch. D. 434; *Grand Junction Canal Co. v. Petty* (1888), 21 Q. B. D. 273; 57 L. J. Q. B. 572; *Roberts v. Gwyrjai District Council*, [1899] 2 Ch. 608; 68 L. J. Ch. 757.

(*b*) *Great Western Rail. Co. v. Bennett* (1867), L. R. 2 H. L. 27; 36 L. J. Q. B. 133; *Dudley Canal Co. v. Grazebrook* (1830), 1 B. & Ad. 59.

(*c*) *R. v. South Wales Rail. Co.* (1850), 14 Q. B. 902; 19 L. J. Q. B. 272; *Bostock v. North Staffordshire Rail. Co.* (1855), 24 L. J. Q. B. 225; *Staffordshire Canal Co. v. Birmingham Canal Co.* (1866), L. R. 1 H. L. 254; 35 L. J. Ch. 757; *In re Metropolitan District Rail. Co. and Cosh* (1880), 13 Ch. D. 607; 49 L. J. Ch. 277; *Mulliner v. Midland Rail. Co.* (1879), 11 Ch. D. 611; 48 L. J. Ch. 258; *Hobbs v. Midland Rail. Co.* (1882), 20 Ch. D. 418; 51 L. J. Ch. 320; *Ayr Harbour Trustees v. Oswald* (1883), 8 App. Cas. 623; *Bayley v. Great Western Rail. Co.* (1884), 26 Ch. D. 434; *In re Gonty and Manchester, Sheffield and Lincolnshire Rail. Co.*, [1896] 2 Q. B. 439; 65 L. J. Q. B. 625; *Caledonian Rail. Co. v. Turcan*, [1898] A. C. 256; 67 L. J. P. C. 69; *In re South Eastern Rail. Co. and Wiffin's Contract*, [1907] 2 Ch. 366; *Great Central Rail. Co. v. Balby-with-Hexthorpe U. D. C.*, [1912] 2 Ch. 110.

Government Board to direct that lands acquired for one purpose shall be applied permanently to a different purpose inconsistent with the original one (*d*). Subject to these limitations the promoters may lawfully use lands for ordinary purposes until they are required for the special purposes of the railway or become superfluous lands (*e*).

No power of alienation for purposes not specified in special Act.

The alienation of lands for purposes other than those specified in the special Act or Acts is not within the powers of promoters (*f*), unless such lands have been acquired for extraordinary purposes, or have become superfluous lands within section 127 of the Lands Clauses Act, 1845. Even when the conveyance of lands by a railway company is *ultra vires* and void, a subsequent intending purchaser is not entitled to recover the amount of his deposit from the vendor, where he has specially contracted to assume that the sale from the railway company was in every respect valid and effectual, or has stipulated to make any objections to title within a certain time and has not done so (*g*).

Abandoned railway.

Different considerations apply in the case of an abandoned railway, in which case the rights are determined either under the Abandonment Acts of 1850 and 1869 (*h*), or under similar provisions in the special Act authorizing the abandonment (*i*). It has

(*d*) *Att.-Gen. v. Hanwell U. D. C.*, [1900] 2 Ch. 377; 69 L. J. Ch. 626.

(*e*) *R. v. Leake* (1833), 5 B. & Ad. 469; *Bayley v. Great Western Rail. Co.* (1884), 26 Ch. D. 434, 439; *Grand Junction Canal Co. v. Petty* (1888), 21 Q. B. D. 273; 57 L. J. Q. B. 572; *Foster v. London, Chatham and Dover Rail. Co.*, [1895] 1 Q. B. 711; 64 L. J. Q. B. 65; *Onslow v. Manchester, Sheffield and Lincolnshire Rail. Co.* (1895), 64 L. J. Ch. 355; *Att.-Gen. v. Teddington Urban District Council*, [1898] 1 Ch. 66; 67 L. J. Ch. 23.

(*f*) *Bostock v. North Staffordshire Rail. Co.* (1855), 4 E. & B. 798; 24 L. J. Q. B. 225; *Mulliner v. Midland Rail. Co.* (1879), 11 Ch. D. 611; 48 L. J. Ch. 258; *In re Metropolitan District Rail. Co. and Cosh* (1880), 13 Ch. D. 607; 49 L. J. Ch. 277; *Rosenberg v. Cook* (1881), 8 Q. B. D. 162; 51 L. J. Q. B. 170; *Bayley v. Great Western Rail. Co.* (1884), 26 Ch. D. 434. Land cannot be dedicated as a highway unless the use by the public is not incompatible with the purposes specified in the Act: *Lancashire and Yorkshire Rail. Co. v. Davenport* (1906), 4 L. G. R. 425; *Att.-Gen. v. London and South Western Rail. Co.* (1905), 21 Times L. R. 220; *Taff Vale Rail. Co. v. Pontypridd U. C.* (1905), 93 L. T. 126; *Great Central Rail. Co. v. Balby-with-Hexthorpe U. C.*, [1912] 2 Ch. 110. See *ante*, p. 23.

(*g*) *Best v. Hamand* (1878), 12 Ch. D. 1; 48 L. J. Ch. 503; *Rosenberg v. Cook* (1881), 8 Q. B. D. 162; 51 L. J. Q. B. 170.

(*h*) 13 & 14 Vict. c. 83, and 32 & 33 Vict. c. 114.

(*i*) *Smith v. Smith* (1868), L. R. 3 Ex. 282; 38 L. J. Ex. 37; *Astley v. Manchester, Sheffield and Lincolnshire Rail. Co.* (1858), 27 L. J. Ch. 478; and see *post*, Book II., p. 383.

been held in Ireland that section 127 does not apply to the case of a derelict line of railway (*k*), but this appears doubtful.

If lands have been purchased for extraordinary purposes (*l*), it is lawful for the promoters to sell such lands, or any part thereof, in such manner, and for such considerations, and to such persons as they may from time to time think fit (*m*).

Two exceptions to general rule—
I. Lands purchased for extraordinary purposes.

This provision is inconsistent with those contained in sections 127—131 of the Lands Clauses Act, 1845, and lands purchased for extraordinary purposes cannot under any circumstances be treated as superfluous lands (*n*).

Sections 127—131 of the Lands Clauses Act, 1845, which refer to superfluous lands, apply in all cases in which the lands acquired are subject to compulsory powers, although, in the particular instance, they have been purchased by agreement with the owner: if the special Act confers a power to take lands compulsorily, it makes no difference that they have been acquired by negotiation (*o*). These sections apply to lands in which the promoters have only a reversionary interest (*p*); but not to the case of a railway which has been abandoned and given up (*q*).

II. Superfluous lands.

Application of sections which refer to superfluous lands.

Mines, purchased by agreement with the owner, are, according to the opinion of Lord Bramwell (*r*), not acquired under the "provisions of the special Act," and therefore, in any point of view, cannot become superfluous lands. In the House of Lords (*s*), Lord Blackburn says he should pause very long before he came to the same conclusion; and this view is supported by a subsequent decision (*t*). It was argued in the same case (*s*) in the House of

Mines.

(*k*) *In re Duffy's Estate*, [1897] 1 Ir. R. 307.

(*l*) *E.g.*, under the Railways Clauses Act, 1845, s. 45, *post*, p. 449. *Vide ante*, p. 32.

(*m*) S. 13, L. Cl. Act, 1845.

(*n*) *City of Glasgow Union Rail. Co. v. Caledonian Rail. Co.* (1876), L. R. 2 H. L. (Sc.) 160; cf. *Hooper v. Bourne* (1877), 3 Q. B. D. 258, *per* Brett, L. J., at p. 281; 47 L. J. Q. B. 437; *Horne v. Lynton and Tawton Rail. Co.* (1874), 31 L. T. 167.

(*o*) *Hooper v. Bourne* (1880), 5 App. Cas. 1; 49 L. J. Q. B. 370; *affg. S. C.* (1877), 3 Q. B. D. 258; 47 L. J. Q. B. 437.

(*p*) *Moody v. Corbett* (1866), L. R. 1 Q. B. 510; 35 L. J. Q. B. 161.

(*q*) *Smith v. Smith* (1868), L. R. 3 Ex. 282; 38 L. J. Ex. 37; but see also *Astley v. Manchester, Sheffield and Lincolnshire Rail. Co.* (1858), 27 L. J. Ch. 478.

(*r*) *Hooper v. Bourne* (1877), 3 Q. B. D. 258, 278; 47 L. J. Q. B. 437.

(*s*) *S. C.* (1880), 5 App. Cas. 1, at p. 23; 49 L. J. Q. B. 370; and see *Astley's case*, *supra*.

(*t*) *Errington v. Metropolitan District Rail. Co.* (1882), 19 Ch. D. 559; 51 L. J. Ch. 305.

Lords, that mines might become superfluous lands, although the surface was required by the promoters for the purposes of the undertaking. For the purposes of the case it was not necessary directly to decide this question, but Lord Cairns and Lord Blackburn expressed their opinion, that the argument was one which could not be maintained, and which was not supported by authority. It has been decided in the Court of Appeal that mines cannot become superfluous lands, where the surface is required for the purposes of the undertaking, and that superfluous lands must be separated by a vertical, not by a horizontal boundary, from land required for the purposes of the company (*u*); where, however, the surface over a tunnel had not become superfluous land, it was held that a disseisor could acquire a title against the railway company under the Statute of Limitations (*x*).

Definition of
superfluous
lands.

Superfluous lands are lands acquired by the promoters of the undertaking under their statutory powers, but which are not required for the purposes thereof. The word "required" is synonymous with "necessary," and it would appear to make no difference in construction, whether the word "thereof" applied to "the undertaking" or to "the statutory powers" (*y*).

Whether any
lands are
superfluous
is a question
of fact.⁷

Lands are not superfluous, if it can reasonably be said at the end of ten years, or of the prescribed period, that there is a purpose, even after that period, for which they would be required in connection with the undertaking, although they are not intended to be so used within a definite or ascertained time (*z*). It is a question of fact whether, applying this test, the particular circumstances are such as to make lands superfluous or not; but if it is clear that the promoters have permanently dedicated lands for purposes outside their statutory powers, such lands become

(*u*) *In re Metropolitan District Rail. Co. and Cosh* (1880), 13 Ch. D. 607; 49 L. J. Ch. 277; *Mulliner v. Midland Rail. Co.* (1879), 11 Ch. D. 611; 48 L. J. Ch. 258; *Ware v. London, Brighton and S. Coast Rail. Co.* (1883), 52 L. J. Ch. 198; *Bayley v. Great Western Rail. Co.* (1884), 26 Ch. D. 434; *In re Lancashire and Yorkshire Rail. Co. and Earl of Derby's Contract* (1909), 100 L. T. 44.

(*x*) *Midland Rail. Co. v. Wright*, [1901] 1 Ch. 738; 70 L. J. Ch. 411.

(*y*) *Great Western Rail. Co. v. May* (1875), L. R. 7 H. L. 283, 292, 303; 43 L. J. Q. B. 233.

(*z*) *Great Western Rail. Co. v. May* (1875), L. R. 7 H. L. 283; 43 L. J. Q. B. 233; *Betts v. Great Eastern Rail. Co.* (1878), 3 Ex. D. 182; 47 L. J. Ex. 461; *affd.* (1879), 5 App. Cas. 7 (n.); 49 L. J. Ex. 197; *Hooper v. Bourne* (1880), 5 App. Cas. 1; 49 L. J. Q. B. 370; *Bayley v. Great Western Rail. Co.* (1884), 26 Ch. D. 434; *Brown v. North British Rail. Co.* (1906), 8 F. 534.

superfluous and the right of pre-emption in the adjoining owner at once arises (*a*). Where promoters have taken lands not for the purposes of their Act, but to enable them to fulfil their contract with another landowner, such lands are superfluous and the right of pre-emption arises on the sale of the land under the contract to the adjoining owner (*b*). When land has been acquired by a railway company for the purposes of their undertaking, and subsequently is purchased compulsorily under their statutory powers by another railway company, there is no inference that such land was not required for the purposes of the undertaking of the company by which it was originally purchased, and such land is not superfluous land (*c*). Where, on a sale, lands were called in the advertisement and particulars "surplus lands," this was held to be a declaration that they had become superfluous (*d*); but a distinction has been drawn where the company merely considered proposals for the sale of land adjoining one of their terminal stations, in which case a finding of fact that the lands in question had not become superfluous lands was approved in the House of Lords (*e*). It must be proved that the advertisement and particulars have been prepared under the authority of the promoters (*f*). If a company purport to convey away lands acquired by them for the purposes of their undertaking, and a deed of conveyance is set aside as invalid, the mere fact of the conveyance is not sufficient to show that the lands are superfluous, but the question will be decided as one of fact (*g*). Where land had been abandoned for twenty-one years, it was held to be clearly superfluous, and that the title of the company had been extinguished under the Statute of Limitations (*h*).

(*a*) *Beauchamp v. Great Western Rail. Co.* (1868), L. R. 3 Ch. 745; 38 L. J. Ch. 162.

(*b*) *Carington v. Wycombe Rail. Co.* (1868), L. R. 3 Ch. 377; 37 L. J. Ch. 213.

(*c*) *Dunkhill v. North Eastern Rail. Co.*, [1896] 1 Ch. 121; 65 L. J. Ch. 178.

(*d*) *London and South Western Rail. Co. v. Blackmore* (1870), L. R. 4 H. L. 610; 39 L. J. Ch. 713; *Moody v. Corbett* (1866), L. R. 1 Q. B. 510; 35 L. J. Q. B. 161.

(*e*) *Macfie v. Callander and Oban Rail. Co.*, [1898] A. C. 270; 67 L. J. P. C. 58.

(*f*) *Moody v. London, Brighton and South Coast Rail. Co.* (1861), 31 L. J. Q. B. 54.

(*g*) *Hobbs v. Midland Rail. Co.* (1882), 20 Ch. D. 418; 51 L. J. Ch. 320.

(*h*) *Norton v. London and North Western Rail. Co.* (1879), 13 Ch. D. 268; *Bayley v. Great Western Rail. Co.* (1884), 26 Ch. D. 434, 449. Cf. *Searby v.*

To a great extent question of *bona fides*.

How lands become superfluous.

Time at which to decide if lands are superfluous.

The question, whether or not lands have become superfluous, is to a great extent one of *bona fides* on the part of the promoters (*i*). The requirements of the undertaking and the user of lands, subsequently to the prescribed period, but before the commencement of an action for their recovery as superfluous lands, are material and admissible in evidence, if such requirements or user have not arisen from unexpected circumstances which could not have had any force at the end of the prescribed period (*k*).

In *Great Western Rail. Co. v. May* (*l*), Lord Cairns, L. C., describes the four different ways in which lands may become superfluous. "It may be, in the first place, land originally taken under the compulsory powers, but taken upon a wrong estimate or calculation of the quantity of land which would be required for a purpose for which it is afterwards found out, by experience, that less land than was originally supposed will be sufficient. Or it may, in the second place, be land which, under the provisions of other clauses with which your Lordships are familiar, the railway company may have been forced to take by reason of wishing to take a part only of premises. There, *ex hypothesi*, that which the directors are forced to take is not land which in any sense they wish to take or want for the purposes of their undertaking—it is thrust upon them for the benefit of the landowners, and obviously is superfluous land. Or, in the third place, it may be land taken originally, and required originally, for the permanent works of the line, but which, in the course of subsequent years, turns out to have been occupied by works which are abandoned, and which, by reason of the abandonment of those works originally supposed to be permanent, becomes land no longer required by the company. Or it may, in the fourth place, be land which has been allowed to be taken by the company, or which has been forced to be taken by the company for temporary purposes, and which has been taken by the company with the intention originally of its being used only for temporary purposes, which temporary purposes have come to an end."

The time at which the question of lands being superfluous or not is decided—unless the promoters previously offer the land for

Tottenham Rail. Co. (1867), L. R. 5 Eq. 409; *Bobbett v. South Eastern Rail. Co.* (1882), 9 Q. B. D. 424; 51 L. J. Q. B. 161.

(*i*) Cf. *Hooper v. Bourne* (1880), 5 App. Cas. 1, *per* Lord Hatherley, at p. 16; 49 L. J. Q. B. 370.

(*k*) *Hooper v. Bourne* (1877), 3 Q. B. D. 258; (1880), 5 App. Cas. 1.

(*l*) (1875), L. R. 7 H. L. 283, 292.

sale or propose to appropriate it to some purpose inconsistent with their statutory powers—is the last day of the ten years or of the prescribed period after the expiration of the time limited by the special Act for the completion of the works (*m*).

If lands do not become superfluous within the ten years or the time prescribed in the special Act, but become so subsequently, it seems doubtful whether a company has any power to sell under the Lands Clauses Acts. The direction to sell under section 127 applies only within the ten years or prescribed time (*n*).

In selling superfluous lands, a railway company can impose such conditions as they wish in their own interests (*o*); but the sale must be an absolute one, without reserving any interest to the company (*p*). Land acquired by a railway company was held by them for the purpose of their undertaking freed from the prohibition of building imposed by an Inclosure Act; it was held that when part of the land was sold as superfluous land, the prohibition against building revived, and on the application of an owner of adjoining land an injunction was granted to restrain the defendant from building (*q*).

Sale of superfluous lands.

The purchaser of superfluous lands has not in respect of such lands any greater rights than the selling company (*r*).

If within the prescribed time, or, if no period be prescribed, within ten years after the expiration of the time limited by the special Act for the completion of the works, the promoters do not absolutely sell and dispose of superfluous lands, they vest in and become the property of the owners of the lands adjoining thereto, in proportion to the extent of their lands respectively adjoining the same (*s*).

Superfluous lands if not sold vest in adjoining owners.

(*m*) *Moody v. Corbett* (1866), L. R. 1 Q. B. 510; 35 L. J. Q. B. 161; *Great Western Rail. Co. v. May* (1875), L. R. 7 H. L. 283; 43 L. J. Q. B. 233.

(*n*) This point was raised, but not settled, in *In re Metropolitan District Rail. Co. and Cosh* (1880), 13 Ch. D. 607, 615 (Jessel, M. R.); 49 L. J. Ch. 277. Cf. *Betts v. Great Eastern Rail. Co.* (1879), 49 L. J. Ex. 197.

(*o*) *In re Higgins and Hitchman's Contract* (1882), 21 Ch. D. 95; 51 L. J. Ch. 772.

(*p*) *London and South Western Rail. Co. v. Gomm* (1882), 20 Ch. D. 562; 51 L. J. Ch. 530; *Ray v. Walker*, [1892] 2 Q. B. 88; 61 L. J. Q. B. 718.

(*q*) *Bird v. Eggleton* (1885), 29 Ch. D. 1012; 54 L. J. Ch. 819. Cf. *Norton v. London and North Western Rail. Co.* (1878), 9 Ch. D. 623.

(*r*) *Pountney v. Clayton* (1883), 11 Q. B. D. 820; 52 L. J. Q. B. 566.

(*s*) S. 127, L. Cl. Act, 1845. A special Act may empower the promoters to retain, hold, use or lease any superfluous lands: *North British Rail. Co. v. Birrell's Trustees*, [1918] S. C. (H. L.) 33.

Vesting is absolute and automatic.

The vesting of superfluous lands in an adjoining owner at the end of the prescribed time, or, if no period be prescribed, at the end of ten years after the expiration of the time limited for the completion of the works, does not depend upon his consent or acceptance, but is a complete parliamentary vesting, made effectual without any further act on his part (*t*). It has been held in an Irish case that such vesting takes place by virtue of a conditional limitation and not of a forfeiture (*u*).

If superfluous lands have become vested in an adjoining owner, his title is not defeated by the circumstance that a private Act, framed afterwards, though before he has made any claim, extends the time limited for the sale of superfluous lands (*x*). A tenant holding under a tenancy from year to year, after the period at which superfluous lands would have vested in an adjoining owner, cannot set up in defence to an action of ejectment that the title has passed from the railway company to such adjoining owner (*y*).

Adjoining owners.

The words "adjoining owners," or "immediately adjoining owners" (section 128), include lessees or other persons having only limited interests (*z*). An owner is an adjoining owner whose lands are separated by a private road, of which he has the exclusive use (*z*), or by a wall built on land, of which he and the promoters are joint owners (*a*). Where the lands of a plaintiff, claiming to recover lands as superfluous lands, were separated from such lands by a road set out under an inclosure award, the soil of which road was vested in the representatives of the lord of the manor, Bramwell and Brett, L. J.J., held that the lord of the manor and not the plaintiff was the adjoining owner (*b*); but this was not necessary for the purposes of their judgment, and is not adverted to in the appeal before the House of Lords (*c*).

(*t*) *Great Western Rail. Co. v. May* (1875), L. R. 7 H. L. 283; 43 L. J. Q. B. 233.

(*u*) *Miller v. Waterford Harbour Commissioners*, [1904] 2 Ir. R. 421.

(*x*) *Moody v. Corbett* (1866), L. R. 1 Q. B. 510; 35 L. J. Q. B. 161; *Great Western Rail. Co. v. May* (1875), L. R. 7 H. L. 283.

(*y*) *London and South Western Rail. Co. v. West* (1867), L. R. 2 C. P. 553; 36 L. J. C. P. 245.

(*z*) *Coventry v. London, Brighton and South Coast Rail. Co.* (1867), L. R. 5 Eq. 104; 37 L. J. Ch. 90.

(*a*) *London and South Western Rail. Co. v. Blackmore* (1870), L. R. 4 H. L. 610; 39 L. J. Ch. 713.

(*b*) *Hooper v. Bourne* (1877), 3 Q. B. D. 258; 47 L. J. Q. B. 437.

(*c*) (1880), 5 App. Cas. 1; 49 L. J. Q. B. 370.

Superfluous lands vest in and become the property of adjoining owners in proportion to the extent of their lands respectively joining the same (*d*). They should be divided among the owners of adjoining properties in proportion to the frontage of each, frontage being the length of the line of contact of each property, if such line was made straight from the point of intersection of the boundaries on one side to the point of intersection of the boundaries on the other side (*e*).

Division among adjoining lands.

In a later case, however, where a question arose between two adjoining owners whose properties lay on either side of a strip of land, the plaintiff was held entitled to so much as would be on his side of a line drawn from the point where his land and the defendant's and the end of the strip met, along the length of the strip to a similar point at the other end (*f*).

Before promoters dispose of superfluous lands, they are required, unless such lands be situate within a town, or be lands built upon or used for building purposes, first to offer the same to the person then entitled to the lands (if any) from which the same were originally severed; or if such person refuse to purchase or cannot be found, then the promoters are required to make a like offer to the person or several persons whose lands immediately adjoin the lands proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands; and where more than one person is entitled to the right of pre-emption, the offer must be made to such persons in succession, one after another, in such order as the promoters think fit (*g*). The owner from whom land has been taken is in a different position from an adjoining owner, and physical contiguity is not necessary to entitle him to exercise his right of pre-emption (*h*).

Right of pre-emption of superfluous lands.

The right of pre-emption arises, and an action may be commenced, so soon as the promoters have done some act which clearly shows that the lands in question are not wanted for the purposes of the special Act, although the period referred to in

Time at which right of pre-emption arises.

(*d*) See *Great Western Rail. Co. v. May* (1875), L. R. 7 H. L. 283, 302; 43 L. J. Q. B. 233.

(*e*) *Moody v. Corbett* (1866), L. R. 1 Q. B. 510; 35 L. J. Q. B. 161.

(*f*) *Smith v. Smith* (1868), L. R. 3 Ex. 282; 38 L. J. Ex. 37.

(*g*) L. Cl. Act, 1845, s. 128.

(*h*) *Hobbs v. Midland Rail. Co.* (1882), 20 Ch. D. 418; 51 L. J. Ch. 320; *London and South Western Rail. Co. v. Blackmore* (1870), L. R. 4 H. L. 610; 39 L. J. Ch. 713; *Holt v. Gas Light and Coke Co.* (1872), L. R. 7 Q. B. 728; 41 L. J. Q. B. 351.

section 127 of the Lands Clauses Act, 1845, has not expired (*i*). Unless a previous offer has been made, in accordance with the provisions of section 128 of the Lands Clauses Act, 1845, the promoters cannot give to a purchaser a good title to superfluous lands; but it is sufficient if the promoters, subsequently to entering into a contract, and before conveyance, have made an offer which has been refused (*k*). A purchaser is, however, not entitled to recover the amount of a deposit, where he has contracted to assume a sale from a railway company to be effectual, or has not raised any objection within a stipulated time (*l*).

Form of
decree on ap-
plication of
an adjoining
owner.

If an adjoining owner claims from a railway company the right of pre-emption of certain lands which the company are about to sell, such lands never having been his nor severed from any part of his estate, a decree, affirming his right to make the claim, will direct an inquiry whether there is any other adjoining owner who is equally entitled with himself to make such claim (*m*).

No right of
pre-emption
of lands in a
town, or built
upon, or used
for building
purposes.

Town.

If superfluous lands are situate within a town, or are built upon or used for building purposes, the persons entitled to the lands from which the same were originally severed, or the adjoining owners, have no right of pre-emption (*n*). In *London and South Western Rail. Co. v. Blackmore* (*o*), Lord Hatherley, L. C., says, "The definition [of the word 'town'] amounts to this,—that where there is such an amount of continuous occupancy of the ground by houses that persons may be said to be living, as it were, in the same town or place continuously, there, for the purposes of the Railway Acts, and according to the popular sense of the word, and not the legal sense, which would not give at all a sensible

(*i*) *Beauchamp v. Great Western Rail. Co.* (1868), L. R. 3 Ch. 745; *Carington v. Wycombe Rail. Co.* (1868), L. R. 3 Ch. 377; 37 L. J. Ch. 213; *London and South Western Rail. Co. v. Blackmore* (1870), L. R. 4 H. L. 610; 39 L. J. Ch. 713. These cases go further than *Astley v. Manchester, Sheffield and Lincolnshire Rail. Co.* (1858), 27 L. J. Ch. 478.

(*k*) *London and Greenwich Rail. Co. v. Goodchild* (1844), 3 Rail. Cas. 507; *London and South Western Rail. Co. v. Blackmore* (1870), L. R. 4 H. L. 610; 39 L. J. Ch. 713.

(*l*) *Best v. Hamand* (1878), 12 Ch. D. 1; 48 L. J. Ch. 503; *Rosenberg v. Cook* (1881), 8 Q. B. D. 162; 51 L. J. Q. B. 170.

(*m*) *London and South Western Rail. Co. v. Blackmore* (1870), L. R. 4 H. L. 610; 39 L. J. Ch. 713.

(*n*) L. Cl. Act, 1845, s. 128.

(*o*) (1870), L. R. 4 H. L. 610; 39 L. J. Ch. 713; *R. v. Cottle* (1851), 16 Q. B. 412; 20 L. J. M. C. 162; *Carington v. Wycombe Rail. Co.* (1868), L. R. 3 Ch. 377; 37 L. J. Ch. 213. Cf. *Elliot v. South Devon Rail. Co.* (1848), 2 Ex. 725, under s. 11.

definition, the place may be said to be a town." The fact that land is within a borough boundary is in no way conclusive (*p*).

The words "built upon" apply to lands which, though not in a town or part of a town, are covered with continuous buildings in the same way as lands in a town, and do not apply to lands in the open country which happen to have a building upon them (*q*). The words "used for building purposes" do not mean lands capable of being used as building ground, but lands actually and *de facto* used for building purposes or connected with the purposes of the erection of buildings (*r*).

Built upon.

Used for building purposes.

The right of pre-emption must be claimed within six weeks after offer of sale, and a declaration in writing made before a justice by some person not interested in the matter in question, stating that such offer has been made and was refused or not accepted within six weeks from the time of making the same, or that the person or all the persons entitled to the right of pre-emption were out of the country, or could not after diligent inquiry be found, or were not capable of entering into a contract for the purchase of such lands, is made sufficient evidence in all Courts of the facts therein stated (*s*).

Time within which right of pre-emption to be claimed.

If the person entitled to the right of pre-emption and the promoters do not agree as to price, the amount is fixed by arbitration, and the costs are in the discretion of the arbitrators. An arbitration for ascertaining the value of superfluous lands is not an arbitration within sections 25—44 of the Lands Clauses Act, 1845. The provisions of those clauses as to costs do not apply (*t*), and there is no obligation on the promoters to take up the award (*u*).

Price, if not agreed, fixed by arbitration.

Upon payment or tender of the purchase-money agreed upon or determined in the case of superfluous lands, the promoters convey

Conveyance by promoters.

(*p*) *Carington v. Wycombe Rail. Co.* (1868), L. R. 3 Ch. 377; 37 L. J. Ch. 213.

(*q*) *S. C.*; *Falkner v. Somerset and Dorset Rail. Co.* (1873), L. R. 16 Eq. 458; 42 L. J. Ch. 851.

(*r*) *Coventry v. London, Brighton and South Coast Rail. Co.* (1867), L. R. 5 Eq. 104; 37 L. J. Ch. 90; *Carington v. Wycombe Rail. Co.* (1868), L. R. 3 Ch. 377; 37 L. J. Ch. 213; *London and South Western Rail. Co. v. Blackmore* (1870), L. R. 4 H. L. 610; 39 L. J. Ch. 713.

(*s*) S. 129, L. Cl. Act, 1845.

(*t*) *In re Eyre's Trusts*, (1869) W. N. 76.

(*u*) *Jones v. South Staffordshire Rail. Co.* (1868), 19 L. T. 603. Cf. *Carington v. Wycombe Rail. Co.* (1868), L. R. 3 Ch. 377, 385; 37 L. J. Ch. 213.

such lands, and their receipt is a sufficient discharge (*x*). The word "grant" in any such conveyance operates as an express covenant that there is an indefeasible estate in fee simple free from incumbrances, and also as an express covenant for quiet enjoyment and further assurance (*y*). The sale must be an absolute one without reserving any interest to the company (*z*). Where a railway company sold superfluous lands for a price payable with interest two years after the date of the conveyance, and reserved a lien on the deed of conveyance and the lands until payment, it was held that the title so acquired was so doubtful that an unwilling purchaser could not be compelled to accept it (*a*); but the company may impose such conditions as they require for their protection (*b*).

Incorporation
of superfluous
lands clauses.

Many public Acts incorporate sections 128—131 of the Lands Clauses Act, 1845, as to the right of pre-emption of superfluous lands, but exclude the vesting clause (section 127) (*c*). In certain special Acts the promoters are given unrestricted powers of sale over such of their lands as are not actually used for the authorized works (*d*), or other special powers abrogating the right of pre-emption (*e*).

(*x*) S. 131, L. Cl. Act, 1845.

(*y*) S. 132.

(*z*) *London and South Western Rail. Co. v. Gomm* (1882), 20 Ch. D. 562; 51 L. J. Ch. 530; *Ray v. Walker*, [1892] 2 Q. B. 88; 61 L. J. Q. B. 718.

(*a*) *Re Thackwray and Young's Contract* (1888), 40 Ch. D. 34; 58 L. J. Ch. 72.

(*b*) *In re Higgins and Hitchman's Contract* (1882), 21 Ch. D. 95; 52 L. J. Ch. 772.

(*c*) See Book II.

(*d*) Cf. the Metropolitan District Railway Act, 1868 (31 & 32 Vict. c. cviii.), s. 15; *Tomlin v. Budd* (1874), L. R. 18 Eq. 368; 43 L. J. Ch. 627.

(*e*) *North British Rail. Co. v. Birrell's Trustees*, [1918] S. C. (H. L.) 33, in which case the power given by the special Act "to lease or otherwise dispose of" lands was held to exclude the operation of the superfluous lands clauses.

BOOK II.



CHAPTER I.

MODIFICATIONS OF THE LANDS CLAUSES ACTS.

OF recent years there has been a tendency (accentuated by conditions connected with or arising out of the war) to give government departments and public and local authorities wide powers of acquiring land compulsorily. The provisions of the Lands Clauses Act, 1845, were framed largely on the basis that the promoters were being given valuable monopolies at the expense of the public and the individual, and as a consequence the individual was protected from any possibility of loss at what often turned out to be considerable expense to the promoters. As local authorities and other bodies representative of the public were given larger powers of acquiring land the legislature introduced alterations and modifications of the Lands Clauses Acts in various subsequent statutes dealing with these bodies, the effect of which was to recognise that these public bodies as well as the individual must be protected (a).

Tendency of
modern
legislation.

The history of the "principle of betterment" is a good illustration of this tendency. It was defined by the Select Committee of the House of Lords presided over by Lord Halsbury, which considered the subject in 1894, as "the principle that persons whose property has clearly been increased in market value by a particular improvement can equitably be required to pay a special charge assessed on such improved value"; while another form of the theory applies to a set-off on the ground of enhanced value to a claim for land taken or injuriously affected.

Betterment.

The principle was first outlined in the Act for the Rebuilding of London after the Great Fire (18 & 19 Car. II. c. 8, s. 26), where

(a) Cf. *Blackpool Corporation v. Starr Estate Co., Ltd.*, [1922] 1 A. C. 27.

there is a provision that the owners of houses and lands "meliorated" by the new streets to be made shall be assessed for the cost of the land necessary to carry out the widening. It was, however, not embodied in the provisions of the Lands Clauses Act, 1845: and the right to introduce it as a set-off against a claim for land injuriously affected was specifically negatived by the Court of Exchequer in the case of *Senior v. Metropolitan Rail. Co.* in 1863 (*b*), a decision which has been accepted and followed ever since, save in two cases where an unsuccessful attempt was made to reintroduce it indirectly (*c*).

The principle appears, however, to have become well established and to have obtained statutory recognition in the United States over 120 years ago, and was incorporated in the Victorian Lands Compensation Statute, 1869 (*d*).

Its statutory recognition in England dates from the Housing Acts (*e*). It has since been incorporated in the Light Railways Act, 1896, s. 13 (1) (*f*), the Development Act, 1909 (*g*), and a number of Local Improvement Acts (*h*), the exact form in which the principle is applied varying considerably.

There is little doubt that it will be incorporated in all future legislation dealing with the provision of improvements by public or semi-public bodies (*i*).

In the valuation of a tied house under a betterment clause, it has been held that in valuing the land apart from the buildings thereon, or in valuing the land and buildings as a whole, the valuer should not take into consideration either the takings and payments of the public-house or the fact that it was tied, but

(*b*) (1863), 32 L. J. Ex. 225.

(*c*) *Eagle v. Charing Cross Rail. Co.* (1867), L. R. 2 C. P. 638; *In re South Eastern Rail. Co. and London C. C.'s Contract*, [1915] 2 Ch. 252.

(*d*) *Harding v. Board of Land and Works* (1886), 11 App. Cas. 208.

(*e*) The Artizans' Dwellings Act, 1879, and the Amending Act of 1882; the Housing of the Working Classes Act, 1890, ss. 38 (8) and 41, *post*, p. 535; the Housing, Town Planning, &c. Act, 1909, s. 58, *post*, p. 552.

(*f*) *Post*, p. 613.

(*g*) *Post*, p. 586.

(*h*) The Manchester Corporation Act, 1894; the London County Council (Improvements) Acts, 1897 and 1899 (60 & 61 Vict. c. cxxlii.; 62 & 63 Vict. c. cclxvi.). Cf. *The Oxford, Ltd. v. London C. C.*, [1898] 2 Ch. 491.

(*i*) For a fuller account of the history of the principle and the considerations of its method of application, see the Report of the House of Lords Select Committee of 1894, and the Second Report [Cd. 9229 of 1918] of the Ministry of Reconstruction Committee.

that in valuing the interests of the owners and the lessees the value of the tying covenant would come into consideration (*k*). The right to recover such a charge as against the lessees of property, where the charge as against the freehold reversioner has been abandoned, was considered in the case of *Holborn and Frascati, Ltd. v. London C. C.* (*l*).

During the war a committee of the Ministry of Reconstruction sat to consider the whole question of the compulsory acquisition of land by public authorities and produced a most valuable report which it was intended should form the basis of new and consolidated legislation. The only outcome of this report up to the present time has been the Acquisition of Land (Assessment of Compensation) Act, 1919, which deals with the acquisition of land by public authorities and makes certain alterations in the existing law. This Act is to be treated as an important modification of the Lands Clauses Act, 1845. It does not lay down a complete new code, but "provides what is *primâ facie* an exclusive and uniform method for ascertaining the compensation to be paid for land authorized to be acquired compulsorily by certain authorities" (*m*), a method which will be applicable in the majority of disputes as to the compulsory acquisition of land in the future.

Acquisition of
land (Assess-
ment of Com-
pensation)
Act, 1919.

We have thought it clearer to set out in the following chapters the main Acts which have introduced modifications of the Lands Clauses Acts, grouped as far as possible under the various headings of the subjects with which they deal.

It must be borne in mind by the reader that it is the modifications only of the Lands Clauses Acts that are dealt with in the chapters which follow. In the case of land authorized to be acquired compulsorily by public authorities or Government departments the Lands Clauses Acts are in every case subject to the modification of the Acquisition of Land (Assessment of Compensation) Act, 1919, which does not apply in the case of private promoters; these two enactments may be further modified by some special enactment dealing with the special purpose for which the land is being acquired. Thus, to give an example, where land is being acquired for the purpose of a school by the education

Modifications
of L. Cl. Act.

(*k*) *In re London C. C. and City of London Brewery Co.*, [1898] 1 Q. B. 387.

(*l*) (1916), 85 L. J. Ch. 266.

(*m*) *Blackpool Corporation v. Starr Estate Co., Ltd.*, [1922] 1 A. C. 27, 32, *per* Lord Haldane.

authority, the special provisions dealing with land acquired for schools will be found under Education Acts, *post*, Chapter VII.; matters not specifically dealt with by those Acts will be found dealt with under the Acquisition of Land Act, 1919, *post*, Chapter II., or if not dealt with by either of the former Acts will be found in the first Book under the Lands Clauses Acts (*n*).

(*n*) Special attention should be paid to the cross references given in respect to the inter-relation of the various Acts.

CHAPTER II.

ACQUISITION OF LAND (ASSESSMENT OF COMPENSATION) ACT,
1919 (*a*).

THE Acquisition of Land (Assessment of Compensation) Act, 1919, is of such far-reaching application that it has been thought advisable to incorporate it practically *verbatim* in the text (*b*).

"Where by or under any statute (whether passed before or after the passing of this Act) land is authorized to be acquired compulsorily by any Government Department or any local or public authority, any question of disputed compensation, and, where any part of the land to be acquired is subject to a lease which comprises land not acquired, any question as to the apportionment of the rent payable under the lease (*c*), shall be referred to and determined by the arbitration of such one of a panel of official arbitrators to be appointed under this section as may be selected in accordance with rules made by the Reference Committee under this section" (*d*).

Tribunal for assessing compensation in respect of land compulsorily acquired for public purposes.

The expression "land" used in this section and throughout the Act "includes water and any interests in land or water and any easement or right in, to, or over land or water" (*e*).

The acquisition must be compulsory, and the Act does not apply in cases of an agreement between the parties for the sale and purchase of land, even where such agreement is embodied in the form of a "statutory bargain" (*f*) in a special Act containing compulsory powers incorporating the Lands Clauses Acts (*g*).

The expression "public authority means any body of persons,

(*a*) 9 & 10 Geo. 5, c. 57.

(*b*) Those parts of the Act that are printed *verbatim* are in inverted commas.

(*c*) Cf. *ante*, pp. 224, 297; see *post*, p. 362.

(*d*) S. 1 (1). The Rules are S. R. & O. 1919, No. $\frac{1836}{L. 30}$.

(*e*) S. 12 (2).

(*f*) Cf. *East London Rail. Co. v. Whitechurch* (1874), L. R. 7 H. L. 81, *per* Lord Cairns, L. C., at p. 89.

(*g*) *Blackpool Corporation v. Starr Estate Co., Ltd.*, [1922] 1 A. C. 27.

not trading for profit, authorized by or under any Act to carry on a railway, canal, dock, water, or other public undertaking" (*h*).

The intention of the legislature is to draw a distinction between a body of persons, such as an ordinary railway company, which trades for profit and a body of persons who are unlike a railway company, inasmuch as they do not trade for the purpose of making a profit which would be available for the purpose of division in the form of dividend. The true meaning of the section is to include within the term "public authority" any body of persons authorized by statute to carry on a public undertaking which does not trade with the object of making profits for themselves or distributing profit as dividend (*i*).

Constitution
of panel of
official arbi-
trators.

"Such number of persons, being persons with special knowledge in the valuation of land, as may be appointed for England and Wales, Scotland and Ireland by the Reference Committee, shall form a panel of persons to act as official arbitrators for the purposes of this Act in England and Wales, Scotland and Ireland respectively: Provided that of the members of the said panel for England and Wales one at least shall be a person having special knowledge of the valuation of land in Wales and acquainted with the Welsh language.

Term and
conditions of
office.

"A person appointed to be a member of the panel of official arbitrators shall hold office for such term certain as may be determined by the Treasury before his appointment, and whilst holding office shall not himself engage, or be a partner of any other person who engages, in private practice or business.

Salary.

"There shall be paid out of moneys provided by Parliament to official arbitrators such salaries or remuneration as the Treasury may determine" (*j*).

Reference
Committees.

The constitution of the Reference Committees for England, Scotland and Ireland, is given in section 1 (5). The Reference Committee for England, which consists of the Lord Chief Justice, the Master of the Rolls and the President of the Surveyors' Institution, has issued a series of rules dated December 2nd, 1919, dealing with the procedure under the Act (*k*).

(*h*) S. 12 (2).

(*i*) *Per* Peterson, J., *Metropolitan Water Board v. Berton*, [1921] 1 Ch. 299, at p. 305, where it was held that the Metropolitan Water Board was a public authority within the meaning of s. 12 (2).

(*j*) S. 1 (2), (3), (4). This section does not apply in the case of a reference to an agreed arbitrator under s. 8.

(*k*) S. R. & O. 1919, No. ¹⁸³⁶
L. 30.

" In assessing compensation, an official arbitrator shall act in accordance with the following rules:—

Rules for
the assess-
ment of
compensation.

" (1) No allowance shall be made on account of the acquisition being compulsory:

" (2) The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise: Provided always that the arbitrator shall be entitled to consider all returns and assessments of capital value for taxation made or acquiesced in by the claimant:

" (3) The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government Department or any local or public authority: Provided that any *bonâ fide* offer for the purchase of the land made before the passing of this Act which may be brought to the notice of the arbitrator shall be taken into consideration.

" (4) Where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any Court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to the public health, the amount of that increase shall not be taken into account:

" (5) Where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the official arbitrator is satisfied that reinstatement in some other place is *bonâ fide* intended, be assessed on the basis of the reasonable cost of equivalent reinstatement:

" (6) The provisions of Rule (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land.

" For the purposes of this section, an official arbitrator shall be

entitled to be furnished with such returns and assessments as he may require" (l).

Rule 1.

No allowance
for compul-
sory acqui-
sition.

It will be noticed that Rule 1 is an entirely new provision, and excludes the arbitrator from giving the usual ten per cent. allowance (m) in respect of the acquisition being compulsory; it does not, however, exclude the giving of a certain percentage with regard to the reinvestment of the compensation moneys in land, and such a percentage has been allowed in cases under this Act.

Rule 2.

Value in open
market.

Rule 2 is more difficult, and as far as the first part of the rule is concerned seems to make little alteration in the principle applicable under the Lands Clauses Acts. The exact meaning of a "sale by a willing seller in the open market" is open to doubt, there being included no reference to the existence of a willing buyer. But the probability is that the Courts would take the view put forward by the Attorney-General (n) in moving the second reading of the Bill in Parliament when he expressed himself as follows:—

"The phrase 'a willing seller' presupposes a willing buyer, and accordingly that phrase has been embodied in recent legislation (o). . . . The term 'a willing seller' considered at large, written upon a sheet of paper, might not imply a willing buyer, but in the words in this context I say that a willing seller does import a willing buyer at a price which land, if sold in the open market by a willing seller, might be expected to realise."

Returns and
assessments.

The second portion of Rule 2 "entitles the arbitrator to consider" all returns and assessments, but does not compel him to do so, and it should be noticed that the returns and assessments must be of capital value only and must be made by or acquiesced in by the claimant (p). Questions will certainly arise as to whether in cases where returns are made by trustees, executors, and others in similar positions, and claims are made by the beneficiaries or devisees, the returns and assessments have been acquiesced in by the claimants.

Rule 3.

Special
adaptability.

Rule 3 presents several difficulties of interpretation. The use of the term "special suitability or adaptability" is unfortunate in view of the recent adverse expressions of judicial opinion upon

(l) S. 2.

(m) Cf. *ante*, p. 141.

(n) Sir Gordon Hewart, *Hansard* (1919), vol. 114, p. 2278.

(o) Cf. Finance (1909-10) Act, 1910, s. 25 (1).

(p) Cf. *ante*, p. 193.

this term (*q*), but it is presumed that the word "suitability" used does not add anything to the meaning of the term "special adaptability" which has hitherto been used in a semi-technical sense in compensation cases. The meaning of this term "special adaptability" has already been fully explained and commented on in Book I. (*q*).

This rule lays down that special adaptability is not to be taken into account if the purpose for which the special adaptability is alleged to exist is—

Not to be taken into account in two cases.

- (a) a purpose to which the land could be applied only in pursuance of statutory powers; or
- (b) a purpose for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government Department or any local or public authority.

As regards (a) it is difficult to ascertain what the intention of the legislature is. Land can be applied to any purpose by the absolute owner except in so far as he is restricted by any special Act of Parliament or by his common law liabilities towards his neighbours with regard to nuisance and other like matters. And as Fletcher Moulton, L. J., pointed out in *In re Lucas and Chesterfield Gas & Water Board* (*r*), although it may be impracticable to work an undertaking, such as a waterworks company for public supply, without parliamentary powers, yet there is nothing to prevent the acquisition of a desirable site for such an undertaking by private negotiation and apart from any statutory powers. It will be seen therefore that land can be applied to any purpose apart from statutory powers, unless some special restrictions exist with regard to the particular land in question (*s*); and if this is the correct view, the provision with regard to statutory powers becomes of little importance and of rare incidence. This provision was undoubtedly framed upon paragraph 10 of the Second Report of the Committee of the Ministry of Reconstruction (*t*), where it is recommended that "so far as this potential competition includes the possible competition of statutory undertakers, we are of opinion

Where statutory powers necessary.

(*q*) See *ante*, p. 111.

(*r*) [1909] 1 K. B. 16, *ante*, p. 110.

(*s*) See on this point, pp. 23, 28, 138, 339.

(*t*) Ministry of Reconstruction, Second Report of the Committee dealing with the Law and Practice relating to the Acquisition and Valuation of Land for Public Purposes, 1918; Cd. 9229.

that it should not be taken into account," but the enactment does not carry out the recommendation of the committee.

Where no
general
market.

As regards (b) it is not clear whether the word "or" is used conjunctively or disjunctively. The apparent intention was to exclude all competition from Government Departments and local and public authorities, but it is not clear that this is the meaning of the words. In a case where evidence could be brought to show that the land was specially adaptable for a purpose for which there was a market of (1) a particular purchaser, (2) a Government Department, and (3) a local authority, it is clearly arguable that such evidence would be admissible; but on the whole we are inclined to the view that the intention of the statute is to rule out all competition between public bodies and so to require the purpose to be one for which there is a market of more than one purchaser (*u*) excluding all public bodies.

Bona fide
offers admis-
sible.

The proviso to this rule is of general application and does not refer to offers in respect of special adaptability only. The proviso, however, does not require the arbitrator to act upon the evidence of the offer but only to take it into consideration, and he may take it into account or not, as he thinks fit, in assessing the compensation (*v*).

Rule 4.

Increased
value by use
of premises.
Contrary to
law;

Rule 4 introduces a new principle that any increase in value of land accounted for by its use in a manner contrary to law or detrimental to health is not to be taken into account.

or detrimental
to health.

This rule may raise difficult questions as to whether in fact premises or land are being used "in a manner which could be restrained by any Court," and in cases of alleged nuisance, waste, breach of covenants, and similar matters it would seem that the arbitrator will first have to decide whether the particular use alleged is restrainable by any Court before he can properly decide whether evidence of the increased value due to that use can be taken into consideration; it must, however, be borne in mind that it is only where an increase of value is in question that this consideration arises. The question of whether the use of the premises is detrimental to the health of the inmates would apply to industrial as well as housing property, and would apparently so apply in cases where the value is increased by reason of an industry carried on which is bound to be more or less detrimental to the health of the

(*u*) Cf. the observations of Fletcher Moulton, L. J., *In re Lucas and Chesterfield Gas and Water Board*, [1909] 1 K. B. 16, 31, quoted *ante*, p. 110.

(*v*) *Percival v. Peterborough Corporation*, [1921] 1 K. B. 414. It should be noted that the offer must have been made before the passing of the Act of 1919.

employees, though this would be a question of fact in any particular case to be determined by the arbitrator.

Rule 5 deals with the principle of reinstatement which had been adopted under the Lands Clauses Acts (*x*), though its provisions differ somewhat from the existing law under those Acts. The arbitrator must in this case be satisfied of the *bonâ fide* intention to reinstate.

Rule 5.
Reinstatement.

Rule 6 is apparently intended to carry out the recommendation contained in section 13 of the Ministry of Reconstruction Report (*y*), which states that the test of market value (incorporated in Rule 2 above) would not cover compensation for trade loss or disturbance or injurious affection or severance, though in many cases the compensation for injurious affection or severance may be based wholly or largely on the value of land (*z*). It should be noticed that in cases falling under this rule the proviso to Rule 2 does not apply.

Rule 6.
Limitation of
Rule 2.

"In any proceedings before an official arbitrator, not more than one expert witness on either side shall be heard unless the official arbitrator otherwise directs:

Provision as
to procedure
before official
arbitrators.

"Provided that, where the claim includes a claim for compensation in respect of minerals, or disturbance of business, as well as in respect of land, one additional expert witness on either side on the value of the minerals, or, as the case may be, on the damage suffered by reason of the disturbance may be allowed.

"It shall not be necessary for an official arbitrator to make any declaration before entering into the consideration of any matter referred to him (*a*).

"The official arbitrator shall, on the application of either party, specify the amount awarded in respect of any particular matter the subject of the award.

"The official arbitrator shall be entitled to enter on and inspect any land which is the subject of proceedings before him.

"Proceedings under this Act shall be heard by an official arbitrator sitting in public.

"The fees to be charged in respect of proceedings before official arbitrators shall be such as the Treasury may prescribe.

(*x*) See *ante*, p. 114. This rule would apparently apply to the *Edinburgh* case there mentioned.

(*y*) *Ante*, p. 323, note (*t*).

(*z*) Cf. *ante*, pp. 142 *et seqq.*

(*a*) Cf. *ante*, p. 189.

Consolidation
of proceedings
on claims for
compensation
in respect of
various
interests in
the same land.

Costs.

Notice of
claim.

"Subject as aforesaid, the Reference Committee may make rules (b) regulating the procedure before official arbitrators" (c).

"Where notices to treat have been served (d) for the acquisition of the several interests in the land to be acquired, the claims of the persons entitled to such interests shall, so far as practicable, and so far as not agreed and if the acquiring authority so desire, be heard and determined by the same official arbitrator, and the Reference Committee may make rules providing that such claims shall be heard together, but the value of the several interests in the lands having a market value shall be separately assessed" (e).

"Where the acquiring authority has made an unconditional offer (f) in writing of any sum as compensation to any claimant and the sum awarded by an official arbitrator to that claimant does not exceed the sum offered, the official arbitrator shall, unless for special reasons he thinks proper not to do so, order the claimant to bear his own costs and to pay the costs of the acquiring authority so far as such costs were incurred after the offer was made (g).

"If the official arbitrator is satisfied that a claimant has failed to deliver to the acquiring authority a notice in writing of the amount claimed by him giving sufficient particulars and in sufficient time to enable the acquiring authority to make a proper offer, the foregoing provisions of this section shall apply as if an unconditional offer had been made by the acquiring authority at the time when in the opinion of the official arbitrator sufficient particulars should have been furnished and the claimant had been awarded a sum not exceeding the amount of such offer" (h).

"The notice of claim shall state the exact nature of the interest in respect of which compensation is claimed, and give details of the compensation claimed, distinguishing the amounts under separate heads and showing how the amount claimed under each head is calculated, and when such a notice of claim has been delivered the acquiring authority may, at any time within six

(b) S. R. & O. 1919, No. 1836.
L. 30.

(c) S. 3. Sub-ss. (5) and (6) (last four lines of previous page) do not apply in the case of an agreed arbitrator under s. 8, *post*, p. 331.

(d) For the procedure in connection with the notice to treat, see *ante*, p. 65.

(e) S. 4, Rule 7. This section does not apply in the case of an agreed arbitrator under s. 8, *post*, p. 331.

(f) Cf. *ante*, p. 200, and *Fisher v. Great Western Rail. Co.*, [1911] 1 K. B. 551.

(g) S. 5 (1).

(h) S. 5 (2); cf. *ante*, p. 200.

weeks after the delivery thereof, withdraw any notice to treat which has been served on the claimant or on any other person interested in the land authorized to be acquired, but shall be liable to pay compensation to any such claimant or other person for any loss or expenses occasioned by the notice to treat having been given to him and withdrawn, and the amount of such compensation shall, in default of agreement, be determined by an official arbitrator (i).

"Where a claimant has made an unconditional offer in writing to accept any sum as compensation and has complied with the provisions of the last preceding sub-section, and the sum awarded is equal to or exceeds that sum, the official arbitrator shall, unless for special reasons he thinks proper not to do so, order the acquiring authority to bear their own costs and to pay the costs of the claimant so far as such costs were incurred after the offer was made (k).

Unconditional
offer to accept.

"Subject as aforesaid, the costs of an arbitration under this Act shall be in the discretion of the official arbitrator who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and the official arbitrator may in any case disallow the cost of counsel (l).

Costs in dis-
cretion of
arbitrator.

"An official arbitrator may himself tax the amount of costs ordered to be paid, or may direct in what manner they are to be taxed (m).

Taxation of
costs.

"Where an official arbitrator orders the claimant to pay the costs, or any part of the costs, of the acquiring authority, the acquiring authority may deduct the amount so payable by the claimant from the amount of the compensation payable to him (n).

Payment of
costs.

"Without prejudice to any other method of recovery, the amount of costs ordered to be paid by a claimant, or such part thereof as is not covered by such deduction as aforesaid shall be recoverable from him by the acquiring authority summarily as a civil debt (o).

Recovery of
costs.

"For the purpose of this section, costs include any fees, charges, and expenses of the arbitration or award" (p).

This section radically alters the law with regard to costs as formerly laid down by the Land Clauses Acts, and the decisions thereunder (q). The arbitrator must make some order as to costs,

Alteration in
law as to
costs.

(i) S. 5 (2); cf. *ante*, p. 80.

(l) S. 5 (4).

(n) S. 5 (6).

(p) S. 5 (8).

(q) Especially s. 34 of the Act of 1845; and cf. *ante*, p. 200.

(k) S. 5 (3).

(m) S. 5 (5).

(o) S. 5 (7).

and before doing so he will have to see the "unconditional offers," if any, by the acquiring authority or the claimant, though these offers are not admissible in evidence for the purpose of assessing compensation (*r*).

Time for unconditional offer.

The Act does not specify the time at which or before which the unconditional offer must be made. Under the Lands Clauses Act this was before the appointment of the second arbitrator (*r*).

The effect of the provision in sub-section (2) whereby the claimant is penalised if he does not give the authority sufficient time to make a "proper" offer is not clear in this respect, but the onus is on the acquiring authority to satisfy the arbitrator that the time was insufficient.

Notice of claim.

The second half of sub-section (2) introduces two important new provisions largely unconnected with costs. First, a "notice of claim" (*s*) giving elaborate details and particulars of the claim must be furnished to the acquiring authority in every case. Second, on receipt of this notice the acquiring authority may within six weeks withdraw any notice to treat in respect of the land authorized to be acquired (*t*), paying compensation (which may be determined by the official arbitrator) for loss or expenses occasioned by the giving and withdrawal of the notice. This new right to withdraw a notice to treat would probably be held to be limited to the several interests in the land, the subject-matter of the notice, and not to extend to all the other land authorized under the scheme to be acquired, though the wording of the section is by no means clear. It should be noticed that either party may apply for the appointment of an arbitrator a fortnight after the service of the notice to treat, and the Reference Committee are then to select the arbitrator as soon as may be (*u*). The arbitrator might thus be appointed and the arbitration take place before the expiration of the six weeks allowed for withdrawal of the notice. This withdrawal can only take place where the claimant has delivered a notice of claim.

Withdrawal of notice to treat.

The provision of sub-section (3) as to an unconditional offer to accept is entirely new. The costs of the party making the offer up to the time of the unconditional offer in this sub-section or in sub-section (1) are in the discretion of the arbitrator under sub-section (4).

(*r*) *Ante*, pp. 115, 200, 216.

(*t*) *Cf. ante*, p. 80.

(*s*) *Cf. ante*, p. 185.

(*u*) Rules 3 (1), 4 (1).

Sub-section (6) may raise questions with regard to the immediate enforcement of an award before the costs have been taxed (*x*).

“The decision of an official arbitrator upon any question of fact, shall be final and binding on the parties, and the persons claiming under them respectively, but the official arbitrator may, and shall, if the High Court so directs, state at any stage of the proceedings, in the form of a special case for the opinion of the High Court, any question of law arising in the course of the proceedings, and may state his award as to the whole or part thereof in the form of a special case for the opinion of the High Court (*y*).”

Finality of award and statement of special cases.

“The decision of the High Court upon any case so stated shall be final and conclusive, and shall not be subject to appeal to any other court” (*z*).

Section 24 of the Arbitration Act, 1889 (*a*), enacts that that Act shall apply to every arbitration under any Act passed thereafter except in so far as the Arbitration Act may be inconsistent with the Act regulating the arbitration or with any rules or procedure authorized or recognised by such Act. The above section 6, together with any rules made thereunder, must therefore be read together with the Arbitration Act, 1889, and where there are any inconsistencies the above section and the rules under this Act will prevail.

The chief alterations in procedure consist in (*a*) the introduction in the first line of the words “upon any question of fact,” which were not in the Arbitration Act, Sched. 1 (*h*). It is not clear whether this indirectly extends the ordinary grounds on which an award may be set aside, *e.g.*, for an error of law *apparent on the face of the award*: (*b*) the provision in sub-section (2); under the Arbitration Act it has been held that no appeal lay on an interim case stated under section 19, but that an appeal did lie on an award stated in the form of a special case (section 7 (*b*)).

“The provisions of the Act or order by which the land is authorized to be acquired, or of any Act incorporated therewith, shall, in relation to the matters dealt with in this Act, have effect subject to this Act, and so far as inconsistent with this Act those provisions shall cease to have or shall not have effect:

Effect of Act on existing enactments.

(*x*) Cf. *ante*, pp. 228 *et seqq.*

(*z*) S. 6 (2).

(*y*) S. 6 (1).

(*a*) 52 & 53 Vict. c. 49.

assessing compensation shall affect any special provisions as to the assessment of the value of land acquired for the purposes of Part I. or Part II. of the Housing of the Working Classes Act, 1890 (*b*), or under the Defence of the Realm (Acquisition of Land) Act, 1916 (*c*), and contained in those Acts respectively, or any Act amending those Acts, if and so far as the provisions in those Acts are inconsistent with the rules under this Act and the provisions of the Second Schedule to the Housing of the Working Classes Act, 1890, as amended by any subsequent enactment (except paragraphs (4), (5), (29), and (31) thereof) shall apply to an official arbitrator as they apply to an arbitrator appointed under that schedule, and an official arbitrator may exercise all the powers conferred by those provisions on such arbitrator (*d*).

“The provisions of this Act shall apply to the determination of the amount of rent or compensation payable in respect of land authorized to be hired compulsorily under the Small Holdings and Allotments Act, 1908 (*e*), or any Act amending that Act, and any matter required thereby to be determined by a valuer appointed by the Board of Agriculture and Fisheries shall be determined by an official arbitrator in accordance with this Act” (*f*).

The intention of this section is to provide an exclusive and uniform procedure in all cases coming within section 1 (1) of the Act (*g*), except in those cases dealt with in the proviso. Its provisions can only apply to subsequent legislation so far as not modified or overruled thereby, though they would apply to orders made subsequently under earlier enactments.

The applicability of the Act to earlier legislation is subject to the clear rule that a general statute will not, in the absence of clear words, be construed as derogating from special provisions in a previous statute. *Generalia specialibus non derogant*, and when the legislature has given its attention to a particular subject and made provision for it, the presumption is that a subsequent and general enactment is not intended to interfere with the special provision unless the intention so to do is clearly manifested (*h*).

(*b*) 53 & 54 Vict. c. 70.

(*c*) 6 & 7 Geo. 5, c. 63.

(*d*) S. 7 (1).

(*e*) 8 Edw. 7, c. 36.

(*f*) S. 7 (2).

(*g*) *Blackpool Corporation v. Starr Estate Co., Ltd.*, [1922] 1 A. C. 27.

(*h*) *Blackpool Corporation v. Starr Estate Co., Ltd.*, [1922] 1 A. C. 27, *per* Lord Cave, at p. 38; see also the speeches of Lords Haldane and Finlay, *dissentiente* Lord Shaw.

The effect of the proviso and of sub-section (2) is dealt with under the headings of the various Acts there referred to (*i*).

“ Nothing in this Act shall prevent, if the parties so agree, the reference of any question as to disputed compensation or apportionment of rent to the Commissioners of Inland Revenue or to an arbitrator agreed on between the parties (*k*).

Power to refer to Commissioners of Inland Revenue or to agreed arbitrator.

“ Where a question is so referred to the Commissioners of Inland Revenue, the Commissioners shall not proceed by arbitration, but shall cause an assessment to be made in accordance with the rules for the assessment of compensation under this Act, and the following provisions shall have effect:—

- “ (a) The parties shall comply with any direction or requirements as to the furnishing of information (whether orally or in writing) and the production of documents and otherwise;
- “ (b) Any officer of the Commissioners appointed for the purpose shall be entitled to enter on and inspect any land which is subject to the reference to them;
- “ (c) The Commissioners, if either party so desires within such time as the Commissioners may allow, shall give the parties an opportunity of being heard before such officer of the valuation office of the Commissioners as the Commissioners may appoint for the purpose;
- “ (d) The assessment when made shall be published to the parties and take effect as if it were an award of an official arbitrator under this Act;
- “ (e) If either party refuses or neglects to comply with any direction or requirement of the Commissioners, the Commissioners may decline to proceed with the matter, and in that case the question shall be referred to an official arbitrator as if there had been no reference to the Commissioners, and the official arbitrator when awarding costs shall take into consideration any report of the Commissioners as to the refusal or neglect which rendered such a reference to him necessary (*l*).

“ Where a question is referred to an arbitrator under sub-section (1) of this section, the provisions of this Act, except sections 1 and 4 and so much of section 3 as requires proceedings to

(*i*) *Post*, pp. 354, 370.

(*k*) S. 8 (1).

(*l*) S. 8 (2).

be in public and as provides for the fixing of fees, shall apply as if the arbitrator was an official arbitrator" (*m*).

The procedure laid down by this section for a reference by agreement to the Commissioners of Inland Revenue is not likely to be adopted in many cases. The assessment must be made in accordance with the rules contained in section 2, but it is not an arbitration, though either party may demand a hearing. There appears to be no appeal by way of special case and it is not clear to what sections of the Act the second half of paragraph (d) refers. The only section dealing with the taking effect of the award is section 6 (and possibly portions of section 5 dealing with costs), which is apparently not applicable. The whole intention appears to be to provide a summary form of procedure in the case of small claims.

The provisions as to an agreed arbitrator, while inconsistent with one of the principal objects of the Act, the establishment of an official and permanent tribunal, may be of importance in their bearing on other Acts (*n*), but otherwise require no comment.

"Either party to a claim for compensation may require the Commissioners for Inland Revenue to assess the value of the land in respect of which the claim arises, and a copy of any such assessment shall be sent forthwith by the Commissioners to the other party, and a certified copy of such assessment shall be admissible in evidence of that value in proceedings before the official arbitrator, and the officer who made the assessment shall attend, if the official arbitrator so require, to answer such questions as the official arbitrator may think fit to put to him thereon" (*o*).

This sub-section is of general application in all arbitrations under the Act. Contrary to the usual rule it is the arbitrator only who can either summon or question the officer who made the assessment.

Certificates of
value of
official arbi-
trators.

"An official arbitrator may on the application of any person certify the value of land being sold by him to a Government department or public or local authority, and the sale of the land to the department or authority at the price so certified shall be deemed to be a sale at the best price that can reasonably be obtained" (*p*).

(*m*) S. 8 (3).

(*n*) *I.e.*, with reference to the provisions of s. 7 (1).

(*o*), S. 8 (4).

(*p*) S. 9; cf. *ante*, pp. 58, 173.

This section provides means whereby persons claiming who are not absolutely entitled to the purchase-money can obtain certificates of value, and enables any person selling land to apply to an official arbitrator for a certificate of value whether the price has been fixed by agreement, arbitration, or any other method.

"The provisions of this Act shall not apply to any purchase of the whole or any part of any statutory undertaking under any statutory provisions in that behalf prescribing the terms on which the purchase is to be effected (q).

Saving for statutory purchases of statutory undertakings.

"For the purposes of this section, the expression 'statutory undertaking' means an undertaking established by Act of Parliament or order having the force of an Act, and the expression 'statutory provisions' includes the provisions of an order having the force of an Act" (r).

It should be borne in mind with reference to this section that this Act is an Act dealing with the acquisition of land, and is not concerned with the acquisition of business organisations, even where the necessities of their business compel them to own land, *e.g.*, tramways, waterworks, and electric lighting companies. There is little doubt that the section was inserted *ex abundanti cautela* to make clear that provisions such as those in the Tramways Act, 1870 (s), were not affected by this Act, and it is thought that the Courts would strive to read this interpretation into the words of the section, which are the more confused by the definition given of statutory undertaking (t). The section is apparently limited to cases where there are particular statutory provisions authorizing the acquisition of the whole or part of the actual undertaking and prescribing the terms of purchase. By "the terms on which the purchase is to be effected" was probably meant the method by which the price was to be arrived at (u), but it is difficult to say that these words do not cover all matters such as those dealt with under the purchase clauses of the Lands Clauses Act, 1845.

The rules made under the Acquisition of Land Act, 1919, are set out *post*, p. 484.

(q) S. 10 (1).

(r) S. 10 (2).

(s) 33 & 34 Vict. c. 78; cf. *Edinburgh Street Tramways Co. v. Lord Provost, &c. of Edinburgh*, [1894] A. C. 456.

(t) The usual definition of undertaking is on the lines given in the Railways Clauses Act, 1845 (8 & 9 Vict. c. 20), s. 2: "The railway and works of whatever description by the special Act authorized to be executed," to which words the expression "established" hardly seems appropriate.

(u) Cf. Tramways Act, 1870, s. 43.

CHAPTER III.

ACQUISITION OF LAND IN TIME OF EMERGENCY BY THE CROWN.

Extent and
limitations of
Royal Pre-
rogative.

THE extent and limitation of the Royal Prerogative and of the power of the executive officers of the Crown to take possession of land compulsorily during an emergency arising out of a state of war were exhaustively discussed in the case of *Attorney-General v. De Keyser's Royal Hotel* (a), in which all the earlier decisions were considered and reviewed.

"The most that can be taken is that the king as *suprema potestas* endowed with the right and duty of protecting the realm is for the purpose of the defence of the realm in times of danger entitled to take any man's property, and that the texts give no certain sound as to whether this right to take is accompanied by an obligation to make compensation to him whose property is taken. In view of this silence, it is but natural to inquire what has been the practice in the past. . . . Speaking generally, what can be gathered from the records as a matter of practice seems to resolve itself into this. There is an universal practice of payment resting on bargain before 1708 and on statutory power and provision after 1708. On the other hand, there is no mention of a claim made in respect of land taken under the prerogative for the acquisition of which there was neither bargain nor statutory sanction. . . . I think it is admissible to consider the statutes in the light of the admitted custom to pay, for, in the face of a custom for payment, it is not surprising that there should be consent on the part of the Crown that this branch of the prerogative should be regulated by statute" (b).

Early
statutes.

In the statutes from the year 1708 until 1819, dealing with this subject-matter "there is not a trace of a suggestion that the Crown was left free to ignore these statutory provisions, and by

(a) [1919] 2 Ch. 197; [1920] A. C. 508; in effect overruling *In re a Petition of Right* (*Shorchum Aerodrome case*), [1915] 3 K. B. 649.

(b) *Att.-Gen. v. De Keyser's Royal Hotel*, [1920] A. C. 508, *per* Lord Dunedin, at p. 521.

its unfettered prerogative do the very things the statutes empowered the Crown to do, but free from the conditions and restrictions imposed by the statutes. . . . A statute expressing the will and intention of the king and the three estates of the realm abridges the Royal Prerogative while it is in force to this extent, that the Crown can only do the particular thing under and in accordance with the statutory provisions and that its prerogative power to do that thing is in abeyance" (c).

The legislation dealing with the defence of the realm which had been contained prior to the year 1842 in statutes of a temporary character enacted during the time of hostilities culminated in that year in the Defence Act, 1842, which was framed upon the earlier statutes. This Act, unlike its predecessors, was passed in a time of peace, and contemplates the acquisition of land by the executive officers of the Crown either temporarily or permanently and in times of peace and war. The land may be acquired by voluntary purchase under its 16th section, or compulsorily under its 19th section (subject to the provision in section 23), the owner in each case being paid or compensated for what he parted with, the method of assessing the compensation being by a jury as set out in the Act (d).

Defence Act,
1842.

Section 7 of the Lands Clauses Acts Amendment Act, 1860 (e), made it lawful for the Secretary of State for War to use all or any of the powers and provisions by the Lands Clauses Consolidation Act, 1845, given to promoters, and all the powers and provisions of that Act were to be treated as if contained in the Defence Act, 1842, a proviso being added that nothing contained in the section should authorize any purchase otherwise than by agreement of any land except according to the provisions of section 23 of the Defence Act, 1842.

The wording of section 19 of the Defence Act, 1842, is wide enough to cover a claim for injury to lands held with lands taken, in which case the principles of the Lands Clauses Acts (f) are applicable (g).

(c) *S. C.*, per Lord Atkinson, at p. 539.

(d) There were various amending Acts (Defence Acts, 1842 to 1875) and various other statutes *in pari materia*, which it is not necessary to set out here in detail.

(e) 23 & 24 Vict. c. 106.

(f) *Ante*, p. 161.

(g) *Blundell v. R.* (1904), 74 L. J. K. B. 91, following *R. v. Abbott*, [1897] 2 Ir. R. 362, and *In re Ned's Point Battery*, [1903] 2 Ir. R. 192.

Where land is acquired compulsorily by any Government department under the Defence Act, 1842, the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919 (*h*), will now apply with respect to any question of disputed compensation.

Defence of the
Realm Con-
solidation Act,
1914.

The Defence of the Realm Consolidation Act, 1914 (*i*), provided that during the continuance of the war regulations for securing the public safety and the defence of the realm might be issued by His Majesty, and by section 1, sub-section (2), provided for the suspension of restrictions on the acquisition and user of land . . . or of any other power under the Defence Acts, 1842 to 1875, or the Military Lands Acts, 1891 to 1903. "By reason of the provisions of this sub-section it must be assumed that it was designed and intended by the legislature that the ample powers for the acquisition of land or the use of it either by agreement of purchase or compulsorily conferred upon the Crown by the Act of 1842 should be availed of" (*j*).

The various Defence of the Realm Acts which were passed between the years 1914 and 1920 (*k*), and which dealt with the acquisition of land, were all of a temporary nature, and it is not now necessary to consider their various provisions. The case of *Attorney-General v. De Keyser's Royal Hotel* (*l*) decided that the Defence of the Realm Consolidation Act, 1914, and the regulations made thereunder conferred no new power upon the Crown of acquiring land, but authorized the taking possession of land under the Defence Act, 1842, while suspending some of the restrictions imposed by that Act upon the acquisition and user of land.

Emergency
Powers Act,
1920.

The Emergency Powers Act, 1920 (*m*), enacts that if at any time it appears to His Majesty that any action has been taken or is immediately threatened by any person or body of persons of such a nature and on so extensive a scale as to be calculated by interfering with the supply and distribution of food, water, fuel, or light, and with the means of locomotion to deprive the community or any substantial portion of the community of the essentials of life, His Majesty may, by a "Proclamation of Emergency," declare that a state of emergency exists. After the issue

(*h*) 9 & 10 Geo. 5, c. 57; *ante*, p. 319.

(*i*) 5 Geo. 5, c. 8.

(*j*) *De Keyser's case*, per Lord Atkinson, at p. 541.

(*k*) Defence of the Realm Consolidation Act, 1914 (5 Geo. 5, c. 8); Defence of the Realm (Acquisition of Land) Acts, 1916 and 1920 (6 & 7 Geo. 5, c. 63; 10 & 11 Geo. 5, c. 79).

(*l*) [1920] A. C. 508; cf. *Matthey v. Curling* (1922), 38 Times L. R. 475.

(*m*) 10 & 11 Geo. 5, c. 55.

of such proclamation, emergency regulations may be made by Order in Council conferring upon the executive such powers as may be deemed necessary for the preservation of peace, for securing and regulating the supply and distribution of food, water, fuel, light, and other necessities, for maintaining the means of transit or locomotion, and for any other purposes essential to the public safety and the life of the community, and make such provisions incidental to the powers aforesaid as may be necessary. These powers are limited under the Act with regard to their duration and are subject to certain subsequent parliamentary sanction.

It will be observed that this Act extends the power of the Crown to emergencies other than those arising from a state of war, and in such emergencies it may obviously be necessary to make provision for the temporary acquisition of land, on which point the Act itself is silent. Unless express provision for compensation is made by the regulations, it would appear by analogy with the reasoning in *De Keyser's* case and by the applicability of the Acquisition of Land (Assessment of Compensation) Act, 1919 (*n*), that compensation will be payable; but the principles on and methods by which such compensation is to be assessed will, it appears, so far as they are not covered by that Act, be at large, unless the Lands Clauses Acts are specifically incorporated.

(*n*) 9 & 10 Geo. 5, c. 57.

CHAPTER IV. (a).

ACQUISITION OF LAND UNDER THE PUBLIC HEALTH AND
METROPOLIS MANAGEMENT ACTS.

Public Health Act, 1875. THE sections of the Public Health Act, 1875, which deal directly with the subject of compensation, where lands are purchased or damage is done, are 175, 176, 308 (b). Their effect is not to alter the general principles of compensation contained in the Lands Clauses Acts and the Acquisition of Land (Assessment of Compensation) Act, 1919 (c). "Lands" and "premises" under the Act are defined to include messuages, buildings, lands, easements, and hereditaments of any tenure (d).

S. 175. Section 175 empowers any local authority, for the purposes (e), and subject to the provisions, of the Act (f), to purchase (g) or take on lease (h), sell or exchange any lands, whether situated within or without their district; and also to buy up any water-mill, dam or weir which interferes with the proper drainage of or the supply of water to their district. Land acquired under this section may now be used for a purpose different from that for which it was

(a) A certain number of cases dealing with minor points under the Public Health Acts have been inserted as notes to the Acts, *post*, pp. 506 *et seqq.*

(b) *Vide post*, pp. 506, 507, 511.

(c) The provisions as to compensation in these Acts and all other Acts dealing with the acquisition of land by a local authority are subject to the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919, and so far as inconsistent with the latter Act they cease to have effect; 9 & 10 Geo. 5, c. 57, s. 7.

(d) S. 4. Cf. *ante*, pp. 8, 11, 319.

(e) These purposes have been extended to include highway purposes; Public Health Acts Amendment Act, 1907 (7 Edw. 7, c. 53), s. 95.

(f) And the amending Act, 7 Edw. 7, c. 53.

(g) The contract must be in writing under seal where value exceeds 50*l.*: s. 174; *vide ante*, p. 54.

(h) An engine-house with pump and machinery for sewage is a work coming within s. 27 for which land must be purchased or leased, and is not a sewer within s. 16; *King's College, Cambridge v. Uxbridge R. D. C.*, [1901] 2 Ch. 768.

acquired, as by the Public Health Acts Amendment Act, 1907 (*i*), it is enacted that notwithstanding anything in section 175 of the Public Health Act, 1875, or any general provision in any local Act, any lands acquired by a local authority and not required for the purposes for which those lands have been acquired may be appropriated for any purpose approved by the Ministry of Health, subject, nevertheless, to any special covenant or condition affecting the use of the lands attached thereto at the time of the purchase by the local authority or to any special provision affecting the use of lands contained in any local Act. There follows a proviso prohibiting the use of such lands for purposes of an obnoxious character unless authorised by the Ministry of Health after a local inquiry. A local authority is not compelled to purchase lands or an easement under section 175 of the Public Health Act, 1875, in a case where it can carry out the purposes of the Act without purchase, and the owner is protected and compensated under section 308 (*k*). When a local authority propose to commence or construct works for sewage purposes outside their district they must give the notices required under section 33.

Section 176 incorporates, with respect to the purchase of lands S. 176. by a local authority for the purposes of the Act, the Lands Clauses Acts, except the provisions relating to access to the special Act (which would be inapplicable), and section 127 of the Lands Clauses Act of 1845, which has reference to the sale and disposal of superfluous lands. The same section prescribes certain conditions precedent, which must be complied with before any of the compulsory powers of the Lands Clauses Acts can be put in force. A notice of intention to take lands for public purposes and to apply for Parliamentary powers, under sub-section 2 of section 176, is not equivalent to a notice to treat (*l*).

All questions of compensation for lands purchased or injured under the Public Health Act, 1875, are governed by the provisions of the Lands Clauses Acts and the Acquisition of Land (Assessment of Compensation) Act, 1919; and although sections 179—181 of the Public Health Act, 1875, contain special

(*i*) 7 Edw. 7, c. 53, s. 95, overruling to this extent the earlier decisions set out in the last edition of this book, and in *Att.-Gen. v. Pontypridd U. D. C.*, [1906] 2 Ch. 257.

(*k*) *In re Corporation of Dudley* (1881), 8 Q. B. D. 86; 51 L. J. Q. B. 121.

(*l*) *Burges v. Bristol Urban Sanitary Authority* (1886), 2 Times L. R. 719; cf. *Higgins v. Lord Mayor of Dublin* (1891), 28 L. R. Ir. 484.

regulations relating to arbitration, these sections do not apply to questions of compensation where lands are purchased (*m*). These sections do not substantially differ from the provisions of the Lands Clauses Acts as to arbitration in the case of injuriously affecting under section 68, and are to be construed in the same way (*n*). The provisions of section 180 must be complied with (*o*), and if the appointment of the arbitrators is invalid, neither the original submission, the appointment of the umpire, nor the award, can be made a rule of Court (*p*). The time for making the award cannot be extended by the arbitrators or umpire beyond that specified in section 180 (*q*); and when the arbitrators disagree, the time for making the umpire's award cannot be extended by him beyond two months from the disagreement (*r*), but the Court or a judge has power under section 9 of the Arbitration Act, 1889, to extend the time for making an award, although the time limited by section 180 has expired (*s*).

S. 308.

Section 308 enacts that where any person sustains any damage by reason of the exercise of any of the powers of the Act, in relation to any matter as to which he is not himself in default, full compensation shall be made to such person by the local authority exercising such powers, and any dispute as to the fact of damage or amount of compensation is to be settled by arbitration in manner provided by the Act. Where a local authority under the powers of the Public Health Act, 1875, laid a sewer on the claimant's land, which connected with a pumping station, sewage, reservoir, and other works not erected on his land, it was held that the claimant was not entitled to any compensation for the depre-

(*m*) *Ex parte Rayner* (1878), 3 Q. B. D. 446; 47 L. J. Q. B. 660; *Re Chesterfield Corporation and Brampton L. B.* (1886), 50 J. P. 824.

(*n*) *Brierley Hill L. B. v. Pearsall* (1884), 9 App. Cas. 595; 54 L. J. Q. B. 25.

(*o*) The umpire must sign the declaration set out in s. 180 (10) as required by s. 180 (11); *Mayor, &c. of Ludlow v. Prosser* (1906), 22 Times L. R. 597. But see now the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919, which apply.

(*p*) *In re Gifford and Bury Town Council* (1888), 20 Q. B. D. 368; 57 L. J. Q. B. 181.

(*q*) *In re Mackenzie and Ascot Gas Co.* (1886), 17 Q. B. D. 114; 55 L. J. Q. B. 309.

(*r*) Cf. *In re Yeadon L. B. and Yeadon Waterworks Co.* (1889), 41 Ch. D. 52; 58 L. J. Ch. 563.

(*s*) *Knowles & Sons, Ltd. v. Bolton Corporation*, [1900] 2 Q. B. 253; 69 L. J. Q. B. 481; affirming *Warburton v. Haslingden L. B.* (1879), 48 L. J. Q. B. 451; and overruling *In re Mackenzie and Ascot Gas Co.* (1886), 17 Q. B. D. 114; 55 L. J. Q. B. 309.

ciation in value of his land owing to the proximity of the sewage works. The erection and user of the sewage works constituted no actionable wrong, and the damage arising therefrom was not sustained by reason of the exercise of the powers of the Public Health Act within the meaning of section 308 (*t*). Section 308 applies to a claim for injury caused by altering the kerb in a street, under section 149 (*u*), or by raising the level of the street (*x*), and even where there is a mere temporary obstruction of access to premises, such obstruction may constitute "damage" within the meaning of the section (*y*). If the compensation claimed does not exceed the sum of 20*l.*, the same may, at the option of either party, be ascertained by and recovered before a Court of summary jurisdiction (*z*).

To what matters s. 308 extends.

In an arbitration under section 308 there is no power to award compensation for damage merely caused by the giving of a notice under section 16 (*a*) before the construction and execution of the sewer is commenced, nor to award costs if the notice is withdrawn before any works are commenced (*b*). As far as injury to lands is concerned, the section gives the same right, and no more, to claim compensation as the Lands Clauses Acts (*c*). The arbitrator is only entitled to inquire as to two matters, the fact of damage and the amount of compensation (*d*). Compensation is only recoverable where the injury would have been actionable but for statutory powers, and the damage complained of must be the consequence of the exercise of the powers of the Act, and not simply of powers transferred from the surveyor to the local board (*e*). Extra costs reasonably incurred over and above party

Same principles apply as under L. Cl. Act, 1845.

(*t*) *Horton v. Colwyn Bay and Colwyn U. D. C.*, [1908] 1 K. B. 327; and see *ante*, p. 161.

(*u*) *Sellors v. Matlock Bath L. B.* (1885), 14 Q. B. D. 928.

(*x*) *R. v. Wallasey L. B.* (1869), L. R. 4 Q. B. 351; 38 L. J. Q. B. 217, on the corresponding section (s. 144) of the Public Health Act, 1848: *Nutter v. Accrington L. B.* (1879), 4 Q. B. D. 375; 48 L. J. Q. B. 487.

(*y*) *Lingké v. Mayor, &c. of Christchurch*, [1912] 3 K. B. 595; and see *ante*, p. 158.

(*z*) P. H. Act, 1875, s. 308.

(*a*) *Vide post*, p. 342.

(*b*) *Davis v. Witney U. D. C.* (1899), 63 J. P. 279; but cf. *ante*, p. 328.

(*c*) *Hall v. Mayor, &c. of Bristol* (1867), L. R. 2 C. P. 322, on the corresponding section (s. 144) of the P. H. Act, 1848. Cf. *East Fremantle Corporation v. Annois*, [1902] A. C. 213; 71 L. J. P. C. 39.

(*d*) *Brierley Hill L. B. v. Pearsall* (1884), 9 App. Cas. 595, 599; 54 L. J. Q. B. 25; *Bradford L. B. v. Hopwood* (1858), 6 W. R. 818.

(*e*) *Hall v. Mayor of Bristol* (1867), L. R. 2 C. P. 322; *Burgess v. North-*

and party taxed costs in successful litigation with a local authority under the Public Health Act, 1875, cannot be recovered as compensation under section 308 (*f*).

Water rights.
S. 332.

Section 332 limits the powers of the local authority, and provides that nothing in the Act shall be construed to authorize any local authority to affect injuriously any reservoir, canal, river or stream, or the feeders thereof, or the supply, quality, or fall of any water contained in any reservoir, canal, river, stream, or the feeders thereof, in cases where any body of persons or person would, but for the Act, have been entitled to prevent or be relieved against such injuriously affecting, unless by consent. The remedy for such injuriously affecting is by an action for an injunction and damages, and not under section 308 (*g*). Section 51, which empowers local authorities to construct waterworks, &c., is subject to the above-mentioned provisions of section 332, and an injunction will be granted to prevent any injurious affection of the common law right of a riparian owner without any proof of sensible damage caused to him (*h*).

Sewers.
S. 16.

Section 16 empowers a local authority to carry any sewer (*i*) through or across a road or any street (*k*) or place laid out as or intended for a street, or under any cellar or vault under the pavement or carriage-way of a street, and after giving reasonable notice in writing to the owner or occupier (if on the report of the surveyor it appears necessary) also through or under any lands within their district. The term "necessary" means necessary for the efficient discharge of the duty of the local authority as to sewers or waterworks in the way most for the benefit of the public. The necessity is to be determined by the surveyor appointed under section 189 of the Act, and the powers of the local authority do not arise till he has reported (*l*).

wich L. B. (1880), 6 Q. B. D. 264; 50 L. J. Q. B. 219; *Durrant v. Branksome U. D. C.*, [1897] 2 Ch. 291; 66 L. J. Ch. 653; *vide ante*, p. 150.

(*f*) *Barnett v. Eccles Corporation*, [1900] 2 Q. B. 423; 69 L. J. Q. B. 834.

(*g*) *R. v. Darlington L. B.* (1865), 35 L. J. Q. B. 45; *Roberts v. Gwyrfaï D. C.*, [1899] 2 Ch. 608; 68 L. J. Ch. 757.

(*h*) *Roberts v. Gwyrfaï District Council*, [1899] 2 Ch. 608. As to provision of water for housing schemes, see *post*, p. 366.

(*i*) An engine-house and machinery for pumping sewage is not a sewer, but must be dealt with under s. 27 of the Act: *King's College, Cambridge v. Uxbridge R. D. C.*, [1901] 2 Ch. 768.

(*k*) This includes a private road: *Hill v. Wallasey L. B.*, [1894] 1 Ch. 133; 63 L. J. Ch. 1.

(*l*) *Lewis v. Weston-super-Mare L. B.* (1888), 40 Ch. D. 55; 58 L. J. Ch. 39.

Under this section local authorities are not obliged to purchase land (*m*), but compensation must be assessed under section 308.

In *In re Corporation of Dudley* (*n*) it was held that the local authority, when the sewer was constructed, obtained a right to vertical support, and that the amount of compensation to the owner should be assessed on the basis that this right was obtained. Right to support.

The effect of this decision was that an owner, through whose land a sewer was run, came under an obligation to preserve subjacent support, and gained a right to compensation for being deprived of the free power to work subjacent mines. The amount of this compensation would be assessed once for all, at the same time as the amount of damage done to the surface lands (*n*).

In consequence of this decision, the Public Health Act, 1875 (Support of Sewers), Amendment Act, 1883 (*o*), was passed, incorporating the provisions of the Waterworks Clauses Act, 1847 (sections 18—27, both inclusive), with respect to mines. The law, therefore, now is, that a local authority are not obliged to pay compensation in the first instance for the value of mines or minerals necessary to give support to their sewers, and the owner of such mines or minerals is not entitled to compensation until after giving notice to the local authority of his intention to work any such mines or minerals. In this event the compensation will be assessed by the same procedure and on the same basis as under the Waterworks Clauses Act, 1847 (*p*). The effect of section 5 of the amending Act is to take out of the Act any sanitary works to which the second part of the section applies, so that neither the landowner nor the local authority can rely on the Act at all (*q*). Public Health Amendment Act, 1883.

Section 54 gives an urban authority the same powers, subject to the same restrictions, for carrying water mains within or without their district as they have and are subject to for carrying sewers. Water mains.

(*m*) *North London Rail. Co. v. Metropolitan Board of Works* (1859), 28 L. J. Ch. 909. Cf. *Taylor v. Oldham Corporation* (1876), 4 Ch. D. 395; 46 L. J. Ch. 105; *Roderick v. Aston L. B.* (1877), 5 Ch. D. 328; 46 L. J. Ch. 802; *Metropolitan Water Board v. London, Brighton and South Coast Rail. Co.*, [1915] 2 K. B. 297.

(*n*) (1882), 8 Q. B. D. 86; 51 L. J. Q. B. 121, discussed in *Jary v. Barnsley Corporation*, [1907] 2 Ch. 600.

(*o*) *Vide post*, p. 512.

(*p*) *Vide ante*, p. 134.

(*q*) *Jary v. Barnsley Corporation*, [1907] 2 Ch. 600, *q.v.* for judgment of Parker, J., going fully into the effect of the amending Act of 1883.

Sewers above ground.

A sewer may be carried above ground, but the amount of compensation would be fixed in proportion to the greater damage done (*r*). Entrances or man-holes form part of the sewer, and may be constructed on private land without purchasing it (*s*).

Public Health Act, 1875, s. 334.

Section 334 of the Public Health Act, 1875, does not deal with the power to work mines, except so far as the working is a question of nuisance (*t*).

Jurisdiction of arbitrator under Public Health Act, 1875.

The jurisdiction of the arbitrator under the Public Health Act, 1875, is not ousted by a *bonâ fide* dispute of liability by the local authority. The question of liability can be raised in an action on the award, and if the arbitrator has made an error in law as to whether the damage complained of has arisen by reason of the exercise of any power under the Public Health Act, 1875, the award will not be final or conclusive (*u*). The award would probably not be enforced by motion where there is a *bonâ fide* dispute on question of principle. In such a case an action should be brought (*x*). The costs of the reference and of the application to the Court, where lands are injuriously affected, are in the discretion of the arbitrator, and if he fails to deal with them the Court may send the award back to him for the purpose (*y*). If he awards costs without stating the amount thereof, the taxing master is bound to tax the costs on the application of the successful party (*z*). But where lands have been taken, and the amount of their value is assessed by arbitration, the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919, as to costs of the arbitration apply (*a*).

The Public Health Acts Amendment Act, 1907 (*b*), besides

(*r*) *Roderick v. Aston L. B.* (1877), 5 Ch. D. 328; 46 L. J. Ch. 802.

(*s*) *Swanston v. Twickenham L. B.* (1879), 11 Ch. D. 838, 849; 48 L. J. Ch. 623.

(*t*) *In re Corporation of Dudley* (1881), 8 Q. B. D. 86; 51 L. J. Q. B. 121.

(*u*) *Brierley Hill L. B. v. Pearsall* (1884), 9 App. Cas. 595; 54 L. J. Q. B. 25 (where the House of Lords distinguished, if they did not overrule, *R. v. Metropolitan Commissioners of Sewers* (1852), 22 L. J. Q. B. 234; *R. v. Burslem L. B.* (1859), 29 L. J. Q. B. 242; and *In re Bradby* (or *Bradley*) and *Southampton L. B.* (1855), 24 L. J. Q. B. 239, which were cases under different statutes).

(*x*) *Re Walker and Beckenham L. B.* (1884), 50 L. T. 207; cf. *Re Newbold and Metropolitan Rail. Co.* (1863), 14 C. B. N. S. 405; *Brierley Hill L. B. v. Pearsall* (1884), 9 App. Cas. 595; 54 L. J. Q. B. 25; *In re Willesden L. B. and Wright*, [1896] 2 Q. B. 412; 65 L. J. Q. B. 567.

(*y*) *Peake v. Finchley L. B.* (1887), 57 L. T. 882.

(*z*) *In re Chesterfield Corporation and Brampton L. B.* (1886), 50 J. P. 824.

(*a*) *Vide ante*, p. 326.

(*b*) 7 Edw. 7, c. 53.

enlarging the purposes for which land may be acquired under the Public Health Acts, specifies three special cases in connection with the building of streets where compensation is to be paid. First, where the position or direction of a new street is varied under section 7, sub-section (4) provides that compensation shall be paid to any person injuriously affected by the exercise by the local authority of their powers under that section. Second, where the local authority requires the corner of any building intended to be erected at the corner of two streets to be rounded or splayed off under section 22, compensation is to be paid for any loss occasioned thereby. Third, where materials are moved from an old street by the local authority under section 28, the owners of the materials are to be compensated. In all three cases the machinery to be used in assessing compensation is that set up under the Public Health Acts (c).

A county council, under the Local Government Act, 1888, s. 65 (d), may purchase, take on lease, or exchange lands or easements, or rights over or in land, for the purpose of any of its powers or duties; and for such purchase, taking on lease, or exchange, sections 175, 177 and 178 of the Public Health Act, 1875, apply as if they had been re-enacted in the Local Government Act, and in terms made applicable to the county council. Local Government Act, 1888.

A parish council has power to acquire land under the Local Government Act, 1894, section 9 (e), the provisions of the Lands Clauses Acts being applied.

By section 107 of the Municipal Corporations Act, 1882, where municipal corporations have not (by charter or special Act) power to acquire land or hold land in mortmain, the council may purchase or acquire any land subject to the approval of the Ministry of Health and on such terms or conditions as the Ministry of Health (f) approve. The provisions of the Lands Clauses Acts, 1845, 1860 and 1869, relating to purchase of lands by agreement, and to agreements for sale and conveyances, sales and releases of any lands or hereditaments, or any estates or interest therein by persons under disability, extend to purchases under this section. This power is in addition to that possessed by a municipal council under the Public Health Act, 1875. Municipal Corporations Act, 1882.

(c) S. 10 and s. 28.

(d) *Vide post*, p. 515.

(e) *Vide post*, p. 515.

(f) Local Government Act, 1888 (51 & 52 Vict. c. 41), s. 72.

Metropolis Management Acts.

Public Health Act, 1875, does not apply to metropolis.

The Public Health Act, 1875, save as provided by the Public Health (London) Act, 1891, does not extend to the metropolis, which comprises the county of London, *i.e.*, the parishes and places mentioned in Schedules A, B and C, to the Metropolis Management Act, 1855, as amended by subsequent Acts (*g*).

Section 102 of the Public Health (London) Act, 1891, extends to Woolwich certain provisions of the Public Health Act, 1875 (including sections 175—181 and 308), without prejudice to the existing effect of the Metropolis Management Acts.

Local Management Acts.

A series of Local Management Acts passed in the years 1855, 1856, 1858, 1862, 1875, 1878, 1879 and 1882, deal with the local management of the metropolis, and we shall refer to the provisions of these Acts, so far as they concern questions of compensation for lands taken or injured, and to the provisions of the general Metropolitan Paving Act (57 Geo. 3, c. xxix.) (Michael Angelo Taylor's Act), which is extended to the whole of the metropolis by section 73 of the Metropolis Local Management Amendment Act, 1862. The London County Council has been substituted for the Metropolitan Board of Works as the central authority for the administration of these Acts (*h*), and of the Public Health (London) Act, 1891 (*i*), and all the powers of the vestries and district boards have been transferred to the borough councils (*k*).

Power to purchase lands for sewers or to pay compensation.

The Metropolis Local Management Acts empower the local authority to carry out sewerage works, either by purchasing the necessary lands or easements, or by paying compensation to owners in respect of injury done.

Vesting of sewers.

Section 68 of the Act of 1855 vests sewers within the county of London, except in Woolwich, other than main sewers, in borough councils, and section 135 vests main sewers in the London County Council.

Section 148 of the Act of 1855 vests sewers belonging to the metropolis, but lying outside the county of London, in the London County Council. The expression sewers in these Acts is not confined to the actual drains themselves, but includes the manholes (*l*),

(*g*) Local Government Act, 1888 (51 & 52 Vict. c. 41), ss. 40, 100.

(*h*) Local Government Act, 1888, s. 40 (8).

(*i*) Public Health (London) Act, 1891, ss. 100, 101.

(*k*) London Government Act, 1899, s. 4.

(*l*) *Swanston v. Twickenham L. B.* (1879), 11 Ch. D. 838; 48 L. J. Ch. 623.

and may include an embankment, through which the sewer passes, keeping the Thames from overflowing low-lying lands (*m*).

Sections 69 and 135 of the Act of 1855 empower any borough council or the London County Council to carry, in connection with the sewers respectively vested in them, any sewers or works through, across or under any street or place laid out as or intended for a street, or through or under any cellar or vault which may be under the pavement or carriage-way of any street, or into, through or under any lands whatsoever, making compensation for any damage done, as is provided under section 225 of the Act. Powers to execute works.

Section 27 of the Act of 1855 empowers the London County Council, subject to the previous approval of the Admiralty, to construct works on the bed or shores of the Thames (*n*) below high-water mark, which may interfere with the navigation of the Thames: and section 28 requires the plans of any works to be executed by the London County Council on the banks, bed or shore, which may interfere with the free navigation of the river, to be approved by the Conservators of the Thames before the works are commenced.

The only condition in all these sections as to carrying sewers or works through private property is the payment of compensation, and there is no obligation to purchase the lands or easements required (*o*). The amount of compensation would be assessed in reference to the subjacent support which a sewer would require, and where the adjacent lands were the property of the same owner probably in reference to adjacent support (*p*). Where subjacent or adjacent support has been paid for, the local authority acquires a right to the maintenance of their sewer. Where no compensation has been paid to an adjacent owner, there is no right to adjacent support against such owner; but, if necessary, such adjacent lands or easement can be purchased under sections 150—156 (*q*). Rights acquired on payment of compensation.

(*m*) *Poplar District Board v. Knight* (1858), 28 L. J. M. C. 37. Cf. *Sutton v. Mayor, &c. of Norwich* (1858), 27 L. J. Ch. 739.

(*n*) See *Brownlow v. Metropolitan Board of Works* (1864), 33 L. J. C. P. 233; *London C. C. v. Port of London Authority*, [1914] 2 Ch. 362; 84 L. J. Ch. 20.

(*o*) *Stainton v. Woolrych and Metropolitan Board of Works* (1857), 26 L. J. Ch. 300; *North London Rail. Co. v. Metropolitan Board of Works* (1859), 28 L. J. Ch. 909; *Hughes v. Metropolitan Board of Works* (1861), 4 L. T. 315.

(*p*) *In re Corporation of Dudley* (1881), 8 Q. B. D. 86; 51 L. J. Q. B. 121.

(*q*) *Metropolitan Board of Works v. Metropolitan Rail. Co.* (1869), L. R. 4 C. P. 192.

Assessment of
compensation
before two
justices or
arbitrators.

Section 225 of the Act of 1855 enacts that the amount of compensation, in cases of dispute, to be made by the London County Council or any borough council (*r*), shall, unless otherwise provided, be settled by and recovered before two justices, unless the amount claimed exceed 50*l.*, in which case the amount shall be settled by arbitration, according to the provisions contained in the Lands Clauses Act, 1845, which are applicable where questions of disputed compensation are authorized or required to be settled by arbitration. This section and sections 69 and 135 contain the word "compensation," but not the words "full compensation" of section 308 of the Public Health Act, 1875. Therefore, although under the Metropolis Local Management Acts owners injured are entitled to claim compensation on the same basis as under section 68 of the Lands Clauses Act, 1845, they could not have any larger claim (*s*). There is, however, no substantial difference between the Lands Clauses Act and the Public Health Act as to the character or *quantum* of compensation (*t*).

Purchase of
lands or
easements.

Sections 150—155 of the Metropolis Local Management Act, 1855, empower the London County Council and any borough council (*r*) to purchase or take on lease any land, or any right or easement in or over any land, which they may deem necessary and expedient in connection with sewerage works. The Lands Clauses Act, 1845, is incorporated (except the provisions as to forfeitures, penalties and costs), but the compulsory powers of purchase of land or any right or easement in or over land are only incorporated so far as to enable the county council to take lands, &c., for the purpose of sewers or works for preventing the sewage of the metropolis from passing into the Thames in or near the metropolis, or otherwise for the purpose of the sewerage or drainage of the metropolis. These powers of compulsory taking cannot be exercised without the consent in writing of a Secretary of State. No compensation is given for injury done to lands where no lands of the claimant have been taken (*u*).

(*r*) Substituted for the Metropolitan Board of Works and any vestry or district board by the Local Government Act, 1888, s. 40 (8), and the London Government Act, 1899, s. 4.

(*s*) Cf. *Herring v. Metropolitan Board of Works* (1865), 34 L. J. M. C. 224; *Hall v. Mayor of Bristol* (1867), L. R. 2 C. P. 322; *Burgess v. Northwich L. B.* (1880), 6 Q. B. D. 264; 50 L. J. Q. B. 219.

(*t*) *Brierley Hill L. B. v. Pearsall* (1884), 9 App. Cas. 595; 54 L. J. Q. B. 25.

(*u*) *Baker v. St. Marylebone Vestry* (1876), 35 L. T. 129.

Section 153 requires previous notice to owners affected before applying for the consent of a Secretary of State.

The London County Council or any borough council have an absolute discretionary right of disposing of lands purchased by them; and unless a right of pre-emption has been reserved to the owner upon the sale by him, there is no right of pre-emption, such as is given by sections 128, 129 and 130 of the Lands Clauses Act, 1845.

The proviso to section 86 of the Metropolis Management Act, 1855, enacts that borough councils shall pay full compensation if they prejudicially affect any ancient mill, or any right connected therewith, or other right to the use of water. In the alternative any borough council may contract for the purchase of such mill, or any such right connected therewith, or other right to the use of water. This proviso does not apply to the London County Council.

The rest of section 86 is repealed by section 142, but re-enacted by section 43 of the Public Health (London) Act, 1891, and the proviso is repeated in section 43. This does not alter the law as to borough councils, but the provisions of sections 100, 101 of the Act of 1891, enable the London County Council in certain cases to act as the sanitary authority, in which event section 43 would apply to them.

Section 22 of the Metropolis Local Management Act, 1862, enlarges the compulsory powers of taking lands given under section 150 of the Act of 1855, and enables the London County Council to take any lands which they may require for the purpose of making convenient roads or ways to or in connection with any sewers or works, or which they may require for making roads or ways during the construction of any sewerage works, or for spoil banks or places of deposit of surplus earth or other materials in the execution of any such works.

Section 25 enables the London County Council to make and maintain certain accommodation works, or in lieu thereof to pay compensation.

Accommodation works.

Sections 34 and 35 place limitations on the powers of the London County Council and a borough council to enter upon any private lands on payment of compensation (*x*). Where the proposed works will interfere with any railway or canal, notice must be given to

Works affecting railways and canals.

(*x*) *North London Rail. Co. v. Metropolitan Board of Works* (1859), 28 L. J. Ch. 909.

the company affected before the works are commenced, with a plan or section showing the nature of the proposed interference. If the company object on account of the probable interruption or endangering of the traffic thereon, the manner of executing the works is to be settled by an engineer appointed by the Board of Trade. The consent of the Board of Trade is required before the levels of a canal or railway can be interfered with, unless the owning companies consent (*y*). These provisions do not affect the rights of railway and canal companies to compensation for the taking or injuriously affecting any land or property of the company, or interrupting the traffic on the railway or canal, or to any damages or costs or expenses which the company is required to pay in consequence of the interruption.

“Michael Angelo Taylor’s Act.”

Section 73 extends and applies to all the metropolis the provisions of 57 Geo. 3, c. xxix., “An Act for better paving, improving, and regulating the streets of the Metropolis, and removing and preventing Nuisances and Disturbances therein.”

Questions of compensation often arise under 57 Geo. 3, c. xxix. (commonly known as Michael Angelo Taylor’s Act) (*z*). There are differences as to matters of procedure between the compensation sections of this Act (80—96) and the Lands Clauses Acts, but on matters of principle the same considerations apply, and compensation is assessable on the same basis as it would be under the combined effect of the Lands Clauses Acts, and the Acquisition of Land (Assessment of Compensation) Act, 1919 (*a*).

House or land must be adjudged obstructive and possession thereof necessary.

Before taking any lands or houses, &c. under the Act, the local authority must, by resolution, adjudge that the same are obstructive, and that possession of them is required for the purpose of widening or altering the streets (*aa*). If this adjudication is honest and *bonâ fide*, it will not be interfered with even though it is erroneous (*b*); but it must be honest and *bonâ fide* (*c*), and it cannot be validly made before the nature of the improvement

(*y*) See also saving in Public Health (London) Act, 1891, s. 136, as to canals.

(*z*) Appendix, p. 520.

(*a*) 9 & 10 Geo. 5, c. 57.

(*aa*) 57 Geo. 3, c. xxix. s. 80.

(*b*) *Thomas v. Daw* (1866), L. R. 2 Ch. 1; 36 L. J. Ch. 201; *Gard v. Commissioners of Sewers* (1884), 28 Ch. D. 486; *Gordon v. St. Mary Abbott’s, Kensington, Vestry*, [1894] 2 Q. B. 742; 63 L. J. M. C. 193; *Parry v. Mayor, &c. of Hammersmith* (1904), 21 Times L. R. 56.

(*c*) *Gard v. Commissioners of Sewers* (1884), 28 Ch. D. 486; *Lynch v. Commissioners of Sewers* (1886), 32 Ch. D. 72; 55 L. J. Ch. 409; *Fernley v. Limehouse Board of Works* (1899), 68 L. J. Ch. 344; (1900), 82 L. T. 524.

has been substantially decided upon (*d*). Where the local authority had agreed to sell a house adjudicated necessary to a third party, thus depriving the owner of his right of pre-emption under section 96, it was held that the adjudication was not an honest one (*e*); but a prior arrangement with regard to the resale of so much of a building as is not required for widening, subject to the owner's right of pre-emption, does not vitiate any adjudication upon the question of necessity (*f*). Where by agreement between the local authority and the London County Council a tramway was to be laid down and certain authorized widenings to be made in connection therewith, of which the local authority were to pay part of the expense, the adjudication by the local authority was held to be *bonâ fide* (*g*). Unless the statutory provisions are complied with, the local authority will be restrained from proceeding (*h*).

It has been held that under section 80 the local authority are entitled to take portion only of any house or land (*h*), but in order to justify such a course the facts must be such that persons acting in a quasi-judicial capacity can honestly come to the conclusion that it is unnecessary to take the whole (*i*). The owner (*k*) can compel them to take the whole of a house if the removal of the part will substantially alter the character or condition of the house (*l*), or injure the enjoyment of the house in the manner in which it was formerly enjoyed (*m*); and will not necessarily be deprived of this right by negotiations for the sale of a part (*n*). The mere fact that the claimants bought the land, the subject of the claim,

Part of a house.

(*d*) *Lynch v. Commissioners of Sewers* (1886), 32 Ch. D. 72; 55 L. J. Ch. 409.

(*e*) *Fernley v. Limehouse Board of Works* (1899), 68 L. J. Ch. 344.

(*f*) *Pescod v. Westminster Corporation*, [1905] 2 Ch. 475.

(*g*) *Parry v. Mayor, &c. of Hammersmith* (1904), 21 Times L. R. 56.

(*h*) *Thomas v. Daw* (1866), L. R. 2 Ch. 1; 36 L. J. Ch. 201; *Lynch v. Commissioners of Sewers* (1886), 32 Ch. D. 72; 55 L. J. Ch. 409.

(*i*) *Davies v. Corporation of the City of London*, [1913] 1 Ch. 415; and cases cited therein.

(*k*) The wishes of the freeholder must be considered as well as those of the tenant: *Beyfus v. Westminster Corporation* (1914), 84 L. J. Ch. 838.

(*l*) *Gordon v. St. Mary Abbott's, Kensington, Vestry*, [1894] 2 Q. B. 742; 63 L. J. M. C. 193; *Thompson v. Hammersmith Corporation*, [1906] 1 Ch. 299.

(*m*) *Gordon v. St. Mary Abbott's, Kensington, Vestry*, *supra*; *Gibbon v. Paddington Vestry*, [1900] 2 Ch. 794; 69 L. J. Ch. 746; *Davies v. Corporation of the City of London*, [1913] 1 Ch. 415; *Beyfus v. Westminster Corporation* (1915), 84 L. J. Ch. 838; and in the case of a factory, *Green v. Hackney Corporation*, [1910] 2 Ch. 105.

(*n*) *Gibbon v. Paddington Vestry*, [1900] 2 Ch. 794; 69 L. J. Ch. 746.

with a knowledge of the scheme does not preclude them from relief (*o*). The whole of a house cannot be taken when, in fact, a part only of it is obstructive (*p*), even if the removal of the part actually required would destroy the identity of the house as a house (*q*), unless it can be shown that it is necessary that the whole should be taken (*r*), or that the remaining portion is useless to the owner (*q*). The attitude which the owner takes up is not to be disregarded, for by demolishing part only the local authority may leave a part which the owner is willing and desirous to make by reconstruction into an effectual house (*s*). The question will be one of fact in each particular case (*t*), and the various decisions are not altogether reconcileable.

Notice
to treat.

The Act does not require a notice to treat (*u*), but it is usual to serve one. If a notice is served, its operation will be governed by the same principles as those governing a notice to treat under the Lands Clauses Act, 1845, and the Acquisition of Land (Assessment of Compensation) Act, 1919 (*x*); it must be treated as good or repudiated as a whole, and when repudiated may be withdrawn altogether by the local authority (*y*).

The questions arising out of the payment of compensation into Court in proceedings under this Act have been dealt with under the general heading (*z*).

(*o*) *Thompson v. Hammersmith Corporation*, [1906] 1 Ch. 299.

(*p*) *Gard v. Commissioners of Sewers* (1884), 28 Ch. D. 486; *Teulière v. St. Mary Abbott's, Kensington, Vestry* (1885), 30 Ch. D. 642; 55 L. J. Ch. 23; *Aldis v. London Corporation*, [1899] 2 Ch. 169; 68 L. J. Ch. 576. Cf. *Fernley v. Limehouse Board of Works* (1899), 68 L. J. Ch. 344.

(*q*) *Aldis v. London Corporation*, [1899] 2 Ch. 169; 68 L. J. Ch. 576.

(*r*) *Fernley v. Limehouse Board of Works* (1900), 82 L. T. 524.

(*s*) *J. L. Denman & Co. v. Westminster Corporation*, [1906] 1 Ch. 464, followed *Davies v. Corporation of the City of London*, [1913] 1 Ch. 415. As to where there are several owners in one house, see *Pescod v. Westminster Corporation*, [1905] 2 Ch. 475.

(*t*) *Gard v. Commissioners of Sewers* (1884), 28 Ch. D. 486, *per* Bowen, L. J., at p. 513.

(*u*) *Lynch v. Commissioners of Sewers* (1886), 32 Ch. D. 72, *per* Cotton, L. J., at p. 85; 55 L. J. Ch. 409.

(*x*) *Birch v. St. Marylebone Vestry* (1869), 20 L. T. 697; *Ecclesiastical Commissioners v. Commissioners of Sewers* (1880), 14 Ch. D. 305; *Wild v. Woolwich Borough Council*, [1910] 1 Ch. 35. *Vide ante*, pp. 55, 65, 326.

(*y*) *Wild v. Woolwich Borough Council*, [1910] 1 Ch. 35.

(*z*) Book I., Chap. XVII., p. 248.

The Metropolis Management (Thames River Prevention of Floods) Amendment Act, 1879, empowers the London County Council to take and use premises required for the purpose of executing flood works. Metropolis Management Amendment Act, 1879.

The provisions of sections 152 and 153 of the Metropolis Local Management Act, 1855, apply when lands are taken under the Act of 1879, and the word "owner" has the same meaning as in the Lands Clauses Act, 1845.

Compensation in respect of injury done or lands taken under the Act of 1879 is settled by a standing arbitrator. The appointment of the arbitrator and proceedings before the arbitrator are regulated by sections 27 and 28. The amount of compensation under section 26 is assessed subject to the following special directions (a):— Compensation subject to special directions.

- (a) The validity of the claim is to be decided by the arbitrator.
- (b) Compensation is to be assessed in regard to the nature of the flood works and the manner in which they have been executed.
- (c) The benefit which has accrued or which may reasonably be expected to accrue to the claimant by reason of the execution of the works is to be taken into account (b).
- (d) The arbitrator may include or exclude an allowance in respect of compulsory powers.
- (e) The arbitrator may make such order as he thinks just as to payment of costs wholly or in part by the board or the claimant.

The larger metropolitan street improvements are carried out under private Acts which, subject to special exceptions, incorporate the Lands Clauses Acts (c).

(a) As to the effect of the general provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919, on special directions of this nature in an Act of local applicability, see *Mayor, &c. of Blackpool v. Starr Estates, Ltd.*, [1922] 1 A. C. 27.

(b) Cf. Light Railways Act, 1896, s. 13, *post*, p. 613.

(c) Cf. London County Council (Improvements) Act, 1897 (60 & 61 Vict. c. cexlii.) (Holborn to Strand).

CHAPTER V.

LAND TAKEN UNDER THE HOUSING OF THE WORKING CLASSES AND
TOWN PLANNING ACTS (*a*).

Section I.—Housing.

Certain new
principles.

CERTAIN new principles of compensation were introduced into a series of Acts which contained provisions regulating the taking of lands and the assessment of compensation when it was desired to provide better accommodation for the poorer classes or to deal with insanitary areas in towns. These Acts are now all repealed and superseded by the Housing of the Working Classes Act, 1890 (53 & 54 Vict. c. 70), with the amending Acts of 1900 and 1903 (63 & 64 Vict. c. 59, and 3 Edw. 7, c. 39), the Housing, Town Planning, &c. Act, 1909 (9 Edw. 7, c. 44), and the Housing, Town Planning, &c. Act, 1919 (9 & 10 Geo. 5, c. 35) (*aa*).

The repealed Acts fell into three classes, and this division has been preserved in the Act of 1890 and the subsequent Acts.

Act of 1890.

Part I. of the Housing of Working Classes Act, 1890 (which is here called the principal Act), deals with "Unhealthy Areas," Part II. with "Unhealthy Dwelling-Houses," and Part III. with "Working Class Lodging Houses."

Act of 1919
not generally
applicable to
Parts I. and II.

The provisions with respect to the purchase and taking of lands otherwise than by agreement under Part I. and Part II. of the principal Act are not—as far as the rules for assessing compensation are concerned—affected by the Acquisition of Land (Assessment of Compensation) Act, 1919 (*b*).

Section 7 of the latter Act (*c*) contains a proviso to the following effect:—"Nothing in this Act relating to the rules for assessing compensation shall affect any special provisions as to the assessment

(*a*) As to payment of money into Court, see *ante*, Chap. XVII., pp. 248, 265.

(*aa*) Certain minor amendments, unconnected with compensation, were enacted by the Housing Act, 1921 (11 & 12 Geo. 5, c. 19).

(*b*) 9 & 10 Geo. 5, c. 57.

(*c*) 9 & 10 Geo. 5, c. 57.

of the value of land acquired for the purposes of Part I. or Part II. of the Housing of the Working Classes Act, 1890 . . . and contained in that Act or any Act amending that Act, if and so far as the provisions in those Acts are inconsistent with the rules under this Act, and the provisions of the Second Schedule to the Housing of the Working Classes Act, 1890, as amended by any subsequent enactment (except paragraphs (4), (5), (29) and (31) thereof) shall apply to an official arbitrator as they apply to an arbitrator appointed under that schedule, and an official arbitrator may exercise all the powers conferred by those provisions on such arbitrator."

The provisions with respect to the purchase and taking of lands otherwise than by agreement under Part III. of the principal Act are, however, governed by the Acquisition of Land (Assessment of Compensation) Act, 1919, and it must be borne in mind that the provisions of the Act or Order by which the land is authorized to be acquired have effect subject to the Acquisition of Land (Assessment of Compensation) Act, 1919, in relation to matters dealt with in that Act, and so far as inconsistent with that Act the provisions of the Act or Order authorizing the taking of the land have no effect (*d*).

But applicable
to Part III.

The provisions with regard to the sanctioning authorities and to the extent of the purposes for which land can be acquired by local authorities under these Acts are not here dealt with as they do not come within the scope of this book.

Part I. of the Housing of the Working Classes Act, 1890, deals with unhealthy areas. Improvement schemes under the Act are carried out under a provisional order (*e*). It would seem that the notice under section 7 (*b*) creates no legal relationship between the parties such as that created by a notice to treat under the Lands Clauses Act, 1845 (*f*). When the confirming Act has been passed authorizing an improvement scheme, it is the duty of the local authority to take steps for purchasing the land required for the scheme (*g*).

Part I.
Unhealthy
areas.

(*d*) 9 & 10 Geo. 5, c. 57, s. 7 (1).

(*e*) Ss. 7 and 8, as amended by 3 Edw. 7, c. 39, s. 5, and 9 Edw. 7, c. 44, s. 24 (1) and sched. 6.

(*f*) *Burges v. Bristol Urban Sanitary Authority* (1886), 2 Times L. R. 719, on the similar provisions of the Public Health Act, 1875, s. 175; *London C. C. v. Wilson's Executors*, [1916] 1 K. B. 837.

(*g*) S. 12. Certain leasehold interests need not be acquired: 9 & 10 Geo. 5, c. 35, sched. 2.

Purchase of
lands by
agreement.

The local authority may take by agreement any lands required for the purpose of carrying into effect the scheme authorized by the confirming Act; but may only exercise compulsory powers over lands proposed by the scheme in the confirming Act to be taken compulsorily. The provisions of the Lands Clauses Acts with respect to the purchase and taking of lands otherwise than by agreement only apply to the extent set forth in the second schedule to the principal Act. In other respects the Lands Clauses Acts are incorporated (*h*).

Special provi-
sion as to com-
pensation.

In assessing the compensation (*i*)—

- (1.)—(a) the estimate of the value of the lands or interests shall be based upon the fair market value (*k*), as estimated at the time of the valuation being made, due regard being had to the nature and then condition of the property, and the probable duration of the buildings in their existing state, and to the state of repair thereof without any additional allowance in respect of the compulsory purchase of an area or of any part of an area in respect of which an official representation has been made (*l*), or of any lands included in a scheme which, in the opinion of the arbitrator, have been so included as falling under the description of property which may be constituted an unhealthy area under Part I. (*m*); and
- (b) in such estimate any addition to or improvement of the property made after the date of the publication of the advertisement of the scheme shall not (unless such addition or improvement was necessary for the maintenance of the property in a proper state of repair) be included, nor in the case of any interest acquired after that date shall any separate estimate of the value thereof be made

(*h*) *S. 20. Wilkins v. Birmingham Corporation* (1883), 25 Ch. D. 78, 81; *London C. C. v. Wilson's Executors*, [1916] 1 K. B. 837.

(*i*) In certain cases these provisions do not apply: 9 & 10 Geo. 5, c. 35, s. 9 (2), *post*, pp. 359, 560.

(*k*) *In re Chandler's Wiltshire Brewery Co. and London C. C.*, [1903] 1 K. B. 569. The estimate is not limited to the value of the property as given in the estimate under the scheme provided for by ss. 4 and 6: *Dye v. Patman* (1898), 46 W. R. 200.

(*l*) *Lord Mayor of Dublin v. Dowling* (1880), 6 L. R. Ir. 502.

(*m*) *Gough v. Mayor, &c. of Liverpool* (1891-2), 7 Times L. R. 581; 8 Times L. R. 247, 323.

so as to increase the amount of compensation payable (*n*);
and

(2.) In the case of a house or premises situate within an unhealthy area evidence is receivable to prove (*o*)—

(1st) that the rental of the house or premises was enhanced by reason of the same being used for illegal purposes or being so overcrowded as to be dangerous or injurious to the health of the inmates; or

(2ndly) that the house or premises are in such a condition as to be a nuisance within the meaning of the Acts relating to nuisances, or are in a state of defective sanitation, or are not in reasonably good repair; or

(3rdly) that the house or premises are unfit, and not reasonably capable of being made fit, for human habitation;

and, if the arbitrator is satisfied by such evidence, then the compensation—

(a) shall in the first case so far as it is based on rental be based on the rental which would have been obtainable if the house or premises were occupied for legal purposes and only by the number of persons whom the house or premises were under all the circumstances of the case fitted to accommodate without such overcrowding as is dangerous or injurious to the health of the inmates; and

(b) shall in the second case be the amount estimated as the value of the house or premises if the nuisance had been abated, or if they had been put into a sanitary condition, or into reasonably good repair, after deducting the estimated expense of abating the nuisance, or putting them into such condition or repair, as the case may be; and

(c) shall in the third case be the value of the land, and of the materials of the buildings thereon.

Section 121 of the Lands Clauses Act, 1845, as to compensation for interests less than a year (*p*), and section 133, as to making good deficiency in land tax and poor's rate (*q*), are incorporated. Before applying to the arbitrator to determine the compensation

(*n*) *Higgins v. Mayor of Dublin* (1891), 28 L. R. Ir. 484.

(*o*) Cf. s. 41, *post*, p. 364, and 9 Edw. 7, c. 44, s. 29, *post*, p. 360.

(*p*) *Wilkins v. Birmingham Corporation* (1883), 25 Ch. D. 78; 53 L. J. Ch. 93.

(*q*) *St. Leonard's, Shoreditch, Vestry v. London C. C.*, [1895] 2 Q. B. 104; 64 L. J. Q. B. 615.

in respect of any particular lands or interests the local authority are to send by post a notice of their intention to the owners or reputed owners (*r*).

Easements.

Upon the purchase of lands, rights of way and other easements are extinguished, and any person who has sustained loss is entitled to compensation (*s*), to be determined in the manner in which compensation for lands is determinable under the Act, or as near thereto as circumstances admit (*t*). This provision extends to rights of light (*u*), and includes cases where a right or easement is in process of being acquired by enjoyment under the Prescription Act at the date when the local authority acquire the land (*x*). Such an inchoate right may be taken into consideration in assessing the amount of compensation, but the extinction is absolute, and the time for prescription can only begin to run afresh, even if the local authority do nothing to obstruct the inchoate right, from the date of such extinction (*x*).

The adjoining owner, who is deprived of his light by the action of the local authority, is entitled to compensation to the extent to which the value of his house is affected by the operation of section 22 (*y*).

Procedure to assess compensation.

The procedure to assess compensation under the principal Act, Part I., will be found in the Appendix, p. 539.

Enlargement of powers of arbitrator.

The special powers of an arbitrator under the principal Act are now as follows:—

1. An arbitrator has the same powers for apportioning any rent-charge, chief or other rent, payment or incumbrance, or any rent payable in respect of lands comprised in a lease as two justices have under the Lands Clauses Act, 1845 (*z*).

Taking part of house, building, or manufactory.

2. Notwithstanding anything in section 92 of the Lands Clauses Act, 1845, the arbitrator may determine that such part of any

(*r*) S. 6, as amended by 9 & 10 Geo. 5, c. 35, sched. 2. As to the date for assessing value, see *London C. C. v. Wilson's Executors*, [1916] 1 K. B. 837.

(*s*) *Swainston v. Fynn and Metropolitan Board of Works* (1883), 52 L. J. Ch. 235; *Badham v. Marris* (1882), 52 L. J. Ch. 237, n.

(*t*) S. 22, and 9 Edw. 7, c. 44, s. 27.

(*u*) In such a case compensation cannot be awarded for loss of profit or goodwill in a trade or business carried on in the premises: *In re Harvey and London C. C.*, [1909] 1 Ch. 528.

(*x*) *Barlow v. Ross* (1890), 24 Q. B. D. 381; 59 L. J. Q. B. 183.

(*y*) S. C. Cf. *In re London, Tilbury & Southend Rail. Co. and Gower's Walk Schools* (1889), 24 Q. B. D. 326, 331; 59 L. J. Q. B. 162.

(*z*) Schedule 2, par. 11.

house, building, or manufactory as is proposed to be taken by the local authority can be taken without material damage to such house, building, or manufactory, and, if he so determine, may award compensation in respect of the severance of the part so proposed to be taken in addition to the value of that part, and thereupon the party interested shall be required to sell and convey to the local authority such part without the local authority being obliged to purchase the greater part or whole of such house, building, or manufactory (a).

Where land included in any scheme made under Part I. of the principal Act (other than land included in such a scheme only for the purpose of making the scheme efficient and not on account of the sanitary condition of the premises thereon or of those premises being dangerous or prejudicial to health) is acquired compulsorily, the compensation to be paid for the land, including any buildings thereon, shall be the value at the time the valuation is made of the land as a site cleared of buildings and available for development in accordance with the requirements of the building byelaws for the time being in force in the district (b); and to these lands the provisions of section 21 of the principal Act cease to apply in so far as they are inconsistent or in conflict with the above provisions (c).

Provisions as to assessment of compensation.

These provisions do not apply to land which is not "unhealthy," and is only included for the purpose of making the scheme efficient. In such a case the provisions of section 21 of the principal Act apply without modification (d).

The more important provisions of section 21 of the principal Act are shortly as follows:—

The estimate of the value is to be based on the fair market value (e), due regard being had to the nature and condition of the property and buildings, without any additional allowance for compulsory purchase in the case of unhealthy lands. Additions and improvements subsequent to the advertisement of the scheme (directed to be issued under section 7) are not normally to be

(a) Schedule 2, par. 12.

(b) 9 & 10 Geo. 5, c. 35, s. 9 (1).

(c) S. 9 (2).

(d) And have been held to include loss of trade profits: *Lord Mayor of Dublin v. Dowling* (1880), 6 L. R. Ir. 502, 509. As to a covenant tying a public-house, see *In re Chandler's Wiltshire Brewery Co. and London C. C.*, [1903] 1 K. B. 569.

(e) See *Gough v. Liverpool Corporation* (1891), 65 L. T. 512.

allowed for, nor are interests subsequently acquired to be separately valued so as to increase the compensation (*e*).

Evidence is admissible as to nuisance, defective sanitation or repair, or unfitness for human habitation and of the rental being enhanced by reason of user for illegal purposes or overcrowding (*f*). In which cases there are special rules limiting the amount of compensation.

If in the opinion of the Ministry of Health it is necessary that provision should be made by the scheme for the re-housing of persons of the working classes on the land or part thereof when cleared, or that the land or a part thereof when cleared should be laid out as an open space, the compensation payable to all persons interested in any "unhealthy" land included in the scheme (but not land included only to make the scheme efficient) is to be reduced by a proportion based on the difference in values between an ordinary cleared site and a cleared site under the scheme.

Omitted
interests.

The amount of purchase-money or compensation to be paid in pursuance of section 124 of the Lands Clauses Act, 1845, in respect of any estate, right or interest in or charge affecting any of the scheduled lands, under Part I., which the local authority have, through mistake or inadvertence, failed or omitted duly to purchase or make compensation for, shall be awarded by the arbitrator and be paid, in like manner, as near as may be, as the same would have been awarded and paid if the claim had been delivered to the arbitrator before the day fixed for the delivery of statements of claim (*g*).

Where the interest of a landowner was omitted from a provisional award, it was held that he was nevertheless a person interested in the award, and that the arbitrator could consider his claim, and alter the award by inserting the amount of his interest (*h*).

Costs.

If the arbitrator is satisfied that the failure or omission to purchase an estate, right, interest or charge arose from any default on the part either of the claimant or of the local authority, he may direct the costs to be paid by the party so in default (*i*).

(*e*) See *Higgins v. Lord Mayor, &c. of Dublin* (1901), 28 L. R. Ir. 484.

(*f*) And see 9 Edw. 7, c. 44, s. 29.

(*g*) Schedule 2, par. 13.

(*h*) *Carr v. Metropolitan Board of Works* (1880), 14 Ch. D. 807.

(*i*) Schedule 2, par. 13. This is probably not inconsistent with the provisions of s. 5 of 9 & 10 Geo. 5, c. 57.

Part II. of the principal Act, after dealing with the closing and demolition of dwelling-houses unfit for human habitation, contains in section 38 provisions dealing with obstructive buildings, which are defined as buildings which, although not in themselves unfit for human habitation, are so situate that by reason of proximity to, or contact with, any other buildings, they cause one of the following effects:—

Part II.
Unhealthy
dwelling-
houses.
Demolition of
obstructive
buildings.

- (a) Stop or impede (*k*) ventilation, or otherwise make or conduce to make the other buildings to be in a condition unfit for human habitation, or dangerous or injurious to health; or
- (b) Prevent proper measures from being carried into effect for remedying any nuisance injurious to health, or other evils complained of in respect of such other buildings.

Where a local authority direct the demolition of an obstructive building, sub-sections 4—9 of section 38 apply. Notice of the intention of the local authority to consider the demolition must be served on the owner (*l*).

The point of time at which ownership is determined is the date of the service of notices of an intention to consider the making of a demolition order and not the date of the order (*l*).

By sub-section 4, when the order of demolition is made and is not appealed against, or is unsuccessfully appealed against, the local authority may purchase the lands on which the obstructive building is erected as if they had been authorized by a special Act to purchase the same. The purchase may be effected at any time within a year after the making of the order, or if it is appealed against from the date of its confirmation. The provisions of the Lands Clauses Acts and Acquisition of Land (Assessment of Compensation) Act, 1919, as to the purchase of lands otherwise than by agreement, apply to a purchase under this sub-section, subject, however, to the provisions of Part II. of the principal Act (*m*).

By sub-section 5, the owner of the lands may, within a month after receiving notice to purchase, declare that he desires to retain the site of the obstructive building, and undertake to pull down,

Right of
owner to
retain site.

(*k*) 9 Edw. 7, c. 44, sched. 2.

(*l*) S. 38 (3). See *R. v. St. Marylebone Vestry* (1887), 20 Q. B. D. 415; 57 L. J. M. C. 9. The expression "owner" includes lessees and mortgagees except persons holding or entitled to the rents and profits under a lease the original term whereof is less than twenty-one years: 9 Edw. 7, c. 44, s. 49 (2).

(*m*) S. 41, *post*, pp. 364, 536.

or let the local authority pull down, the building. On giving this notice and undertaking, the owner of the site is entitled to retain the site, and to receive compensation from the local authority for the pulling down of the building. By sub-section 6, the amount of compensation for pulling down the building and the amount of compensation on the purchase of the site are, in case of difference, to be settled by arbitration in manner provided by Part II. of the principal Act (*m*).

Power to take part only of obstructive building.

Where the local authority has powers of compulsory purchase, the owner of a house or other building (*n*) or manufactory cannot insist on his entire holding being taken where part only is proposed to be taken as obstructive, and where, in the opinion of the arbitrator to whom the question of disputed compensation is submitted, such part can be severed from the remainder of the house or factory without material detriment thereto, provided that the arbitrator may award compensation for severance in addition to the value of the part taken (*o*).

Amount of compensation and purchase-money.

The amount of compensation where the site is retained, and the amount of purchase-money where the site is taken, and the apportionment of such compensation and purchase-money (*p*), are, in case of difference, to be settled by arbitration, as provided by section 41 of the principal Act.

Contribution from premises benefited.

By section 38 (8), where, in the opinion of the arbitrator (*q*), the demolition of an obstructive building adds to the value of other buildings by removing the obstruction as defined in section 38 (1), the arbitrator has power to apportion so much of the compensation to be paid for the demolition of the obstructive building as may be equal to the increase in the value of such other buildings, amongst such other buildings respectively. The amounts apportioned are to be deemed private improvement expenses, and improvement rates may be levied on the occupiers of such premises accordingly (*r*). By section 38 (9), if any dispute arises between

(*m*) S. 41, *post*, pp. 364, 536.

(*n*) 9 Edw. 7, c. 44, sched. 2.

(*o*) S. 38 (7).

(*p*) 9 Edw. 7, c. 44, s. 28 (1). Where the amount has been settled otherwise than by arbitration under the principal Act the apportionment may be made by an arbitrator specially appointed for the purpose: s. 28 (2). It is not clear whether such an arbitration would be within the Acquisition of Land (Assessment of Compensation) Act, 1919.

(*q*) Similar provisions to those in note (*p*) apply as to the apportionment of the betterment charge: 9 Edw. 7, c. 44, s. 28 (2).

(*r*) The "principle of betterment," *vide ante*, p. 315.

the owner or occupier of any such building and the arbitrator by whom the apportionment is made, such dispute is to be settled by two justices in manner provided by the Lands Clauses Act, 1845, in cases where the compensation claimed in respect of lands does not exceed 50*l*.

Under section 39 of the principal Act, the local authority may direct the preparation of a reconstruction scheme in the following cases:—

Reconstruction scheme.

(1) Where an order for demolition of an insanitary or obstructive building has been made (*s*), and where it seems expedient to utilize the site of the building ordered to be demolished, (a) as a highway or open space, (b) for dwellings of the working classes, or (c) for exchange for other land more suitable for the erection of such dwellings.

(2) Where the demolition, reconstruction, and rearrangement of any buildings (which with their appurtenances are too small to constitute an unhealthy area under Part I. of the principal Act) would remove conditions dangerous or prejudicial to the health of the inhabitants of the buildings in question or neighbouring buildings, arising from the closeness, narrowness, or bad condition of the buildings in question, or the want of light, air, or ventilation, or any other sanitary defect.

Notice of the scheme is served in the same way as notice of a scheme under Part I. of the principal Act, and the local authority has to obtain from the Ministry of Health an order sanctioning the scheme. The order may incorporate the provisions of the Lands Clauses Acts, and so far as it does so is to be deemed the special Act, and the local authority the promoters (*t*). Upon sanction of the scheme the local authority may purchase the area comprised in the scheme (*u*).

The local authority must acquire the scheduled area within three years from the confirmation of the order (*x*), and the provisions of Part I. of the Act as to the extinction of rights of way and other easements apply also to a reconstruction scheme (*y*).

In all cases in which the amount of compensation, under Part II. of the principal Act, is to be settled by arbitration, similar provisions to those under Part I. (*z*), where "unhealthy" land is

Assessment of compensation.

(*s*) *Vide ante*, pp. 361, 362.

(*u*) S. 39 (4).

(*y*) S. 39 (8).

(*t*) S. 39 (7).

(*x*) S. 39 (7).

(*z*) *Vide ante*, p. 359.

being acquired have effect, section 41 of the principal Act taking the place of section 21.

The provisions of section 41 are substantially the same as those in section 21 with the exclusion of the provisions as to additions and improvements subsequently made and interests subsequently acquired, but in addition allowance is made in respect of any increased value given to other dwelling-houses of the same owner by the alteration or demolition by the local authority of any buildings (a).

The remainder of the provisions of section 41 are set out in the Appendix at p. 536, but the majority of these are no longer applicable, the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919, having taken their place.

Part III.
“Working
class lodging
houses.”

Part III. of the principal Act deals with the provision of working class lodging houses. This expression includes separate houses or cottages whether containing one or several tenements (b); the expression cottage may include a garden of not more than one acre (c).

**Power to
acquire lands
compulsorily.**

The local authority has power to acquire lands compulsorily (d) for these purposes (e) under Part III. of the principal Act, section 57, as amended by section 2 of the Housing, Town Planning, &c. Act, 1909. These powers have been extended (f) to include power—

- (a) to acquire any houses or other buildings standing on the proposed site;
- (b) to acquire houses which might be made suitable for the working classes together with any lands occupied therewith.

**Special
procedure.**

Section 57 of the principal Act incorporated sections 175—178 of the Public Health Act, 1875, but for the provisions of the operative section 176 has been substituted the procedure under section 2 of the Housing, Town Planning, &c. Act, 1909, which

(a) S. 41 (2) (b); the “principle of betterment,” *vide ante*, p. 315.

(b) 53 & 54 Vict. c. 70, s. 53 (1).

(c) 9 Edw. 7, c. 44, s. 50.

(d) But not the lands of local authorities or public undertakers, or parks, gardens, pleasure grounds, &c.: 9 Edw. 7, c. 44, s. 45.

(e) Lands so acquired can be used for any purpose within this part of the principal Act, and the deposited plans need not be adhered to: *Bradshaw v. Bray U. D. C.*, [1907] 1 Ir. R. 152.

(f) 9 & 10 Geo. 5, c. 35, s. 12 (1).

procedure only applies in so far as it is not inconsistent with the procedure laid down by the Acquisition of Land (Assessment of Compensation) Act, 1919. The procedure under section 2 of the Act of 1909 is set out in the first schedule to the Act, which, *inter alia*, incorporates the Lands Clauses Acts (except section 127 of the Act of 1845) and the minerals clauses (sections 77—85) of the Railways Clauses Consolidation Act, 1845. Special power is given to enter on lands required for the purposes of Part III. of the principal Act after giving fourteen days' notice without previous consent or compliance with sections 84—90 of the Lands Clauses Consolidation Act, 1845, but subject to the payment of compensation and interest thereon as if these sections had been complied with (*g*). Paragraph 8 of the schedule provides that the arbitrator shall so far as practicable in assessing compensation act upon his own knowledge and experience but subject as aforesaid is to hear by themselves or their agents any authorities or parties authorized to appear, and is to hear witnesses, but except in such cases as the Ministry of Health otherwise direct is not to hear council (*sic*) or expert witnesses (*h*).

Compensation for ecclesiastical lands is to be paid to the Ecclesiastical Commissioners and not as directed by the Lands Clauses Acts (*i*). Ecclesiastical lands.

Certain general provisions are contained in the Acts applicable to all three Parts, the principles of which (so far as compensation is concerned) are as follows:— Provisions applicable to all three Parts.

Where purchase-money or compensation is payable to a local authority it may be paid into Court (*k*) or with the consent of the Ministry of Health may instead be paid and applied as the Ministry determine, the decision of the Ministry being final and conclusive (*l*). Compensation payable to a local authority.

(*g*) 9 & 10 Geo. 5, c. 35, s. 10 (1). S. 10 (2) makes similar provisions in the case of purchase by agreement or appropriation of land in the possession of a tenant for a year or from year to year; see Lands Clauses Consolidation Act, 1845, s. 121, *ante*, p. 173.

(*h*) It is difficult to say how far this is inconsistent with the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919. See ss. 2 (3), 3 (1) and 7 (1) of that Act.

(*i*) Par. 12.

(*k*) 53 & 54 Vict. c. 70, sched. 2, par. 20, incorporating ss. 69—80 of the Lands Clauses Act, 1845.

(*l*) 9 Edw. 7, c. 44, s. 5.

- Deficiency in land tax or poor's rate.** Section 133 of the Lands Clauses Consolidation Act (which provides for the land tax and poor's rate being made good by the promoters) (*m*) does not apply in the case of lands acquired by local authorities for the purpose of these Acts.
- Ancient monuments.** No land which is the site of an ancient monument or other object 'of archæological interest may be acquired for the purposes of these Acts (*n*).
- Commons and open spaces.** Provision embodying a reinstatement principle is made for the protection of commons, open spaces, and allotments (*o*).
- Acquisition of water rights.** For the purposes of a scheme under the Acts the local authority are authorized to abstract water from any river, stream, lake, &c., in like manner as they are authorized to acquire land, subject to a prior obligation of affording a sufficient supply of water to any riparian owners, &c. who are deprived of water by the abstraction (*p*).

Section II.—Town Planning.

- Town planning schemes.** Town planning schemes were introduced by the Housing, Town Planning, &c. Act, 1909, which empowered local authorities (*q*) to prepare such a scheme with the authority of the Local Government Board (*r*). Such a scheme may be made as respects any land which is in course of development or appears likely to be used for building purposes, with the general object of securing proper sanitary conditions, amenity, and convenience in connection with the laying out and use of the land and of any neighbouring lands (*s*). The expression "land likely to be used for building purposes" includes any land likely to be used for open spaces, roads, streets, parks, pleasure or recreation grounds, or for incidental purposes, and the decision as to whether land is likely to be used for building purposes rests with the Ministry of Health,

(*m*) See *ante*, p. 299.

(*n*) 9 Edw. 7, c. 44, s. 45.

(*o*) 9 Edw. 7, c. 44, s. 73.

(*p*) 9 & 10 Geo. 5, c. 35, s. 14. These powers are subject to the provisions of s. 52 of the Public Health Act, 1875, and do not apply to water already appropriated under statutory power or needed for canals, &c.

(*q*) Alone or jointly with any other local authorities: 9 & 10 Geo. 5, c. 35, s. 42.

(*r*) The Housing, Town Planning, &c. Act, 1919, makes this authorization no longer necessary except in special cases: 9 & 10 Geo. 5, c. 35, s. 42.

(*s*) 9 Edw. 7, c. 44, s. 54 (1), as amended by 9 & 10 Geo. 5, c. 35, sched. 3.

whose decision is final (*t*). The Ministry of Health have wide powers as to prescribing general and special provisions for carrying out any town planning schemes, which provisions take effect as part of the scheme (*u*). These powers are set out in the Fourth Schedule to the Act of 1909 and in section 55 (1) and (2) (*x*). The Ministry of Health may make regulations as to the procedure with regard to a scheme, including the publication of notices, and hearing of objections by persons affected (*y*).

Any person whose property is injuriously affected is entitled to compensation from the responsible authority if he makes a claim within the time limited by the scheme (*z*). No claim can be made on account of any building erected on or contract made or other thing done with respect to land included in the scheme after the resolution of the local authority to prepare or adopt the scheme or after the date when such resolution takes effect, as the case may be (*a*).

Injurious
affection.

Work done
after resolu-
tion.

The responsible authority can also make a claim as to betterment and recover from any person whose property is increased in value one-half of the amount of the increase (*b*).

Betterment.

The above sections do not deal with the acquisition of land compulsorily for the purposes of a town planning scheme, but only with compensation for injurious affection, and consequently the assessment of such compensation is governed by the Town Planning Acts and not by the Acquisition of Land (Assessment of Compensation) Act, 1919.

Compensation
for lands
taken.

The question of whether compensation is payable and the amount of such compensation is to be referred to a single arbitrator appointed by the Ministry of Health, unless the parties agree upon

(*t*) 9 Edw. 7, c. 44, s. 54 (7).

(*u*) 9 Edw. 7, c. 44, s. 55 (1) and (2).

(*x*) *Post*, pp. 557, 550.

(*y*) 9 Edw. 7, c. 44, s. 56 and sched. 5, as amended by 9 & 10 Geo. 5, c. 35, sched. 3; *post*, pp. 551, 558.

(*z*) 9 Edw. 7, c. 44, s. 58 (1). The time limited must not be less than three months after notice of approval of the scheme; *ibid*.

(*a*) 9 Edw. 7, c. 44, s. 58 (2), as amended by 9 & 10 Geo. 5, c. 35, sched. 3. See *In re Ellis and Ruislip-Northwood U. D. C.*, [1920] 1 K. B. 343, 361. But this provision does not apply as regards work done before the date of approval of the scheme to complete a building or carry out a contract already commenced (*ibid.*), or where permission has been granted by the Ministry of Health to develop an estate, &c.: 9 & 10 Geo. 5, c. 35, s. 45.

(*b*) 9 Edw. 7, c. 44, s. 58 (3); cf. *ante*, pp. 315, 362, 364.

some other method of determination (*c*). Compensation is also payable in respect of expenditure incurred by any person for the purpose of complying with a scheme which has been revoked, and is to be assessed in a similar manner (*d*).

The amount due as compensation or for betterment may be recovered summarily as a civil debt (*e*).

Where the provisions of a town planning scheme are such as would have been enforceable as byelaws (*f*) no compensation is payable in respect of their enforcement (*g*); nor where the provisions deal with the free space around the buildings (*f*), the number of buildings to be erected, or the height and character of the buildings, provided the Ministry of Health consider such provisions reasonable (*i*).

Section 60 of the 1909 Act gives the responsible authority or local authority (*k*) power to purchase land for town planning schemes either by agreement or compulsorily with authorization. Where the land is to be acquired compulsorily the provisions of Part III. of the Housing of Working Classes Act, 1890 (*l*), apply, as amended by sections 2 and 45 of the 1909 Act (*m*). It will be noticed that Part III. of the Act of 1890 is applied in its unamended form save for the amendments contained in sections 2 and 45 of the 1909 Act, and in the 1919 Act (*n*).

Determina-
tion by
Ministry of
Health.

Where the Ministry of Health are authorized to determine any matter with respect to a town planning scheme they may—except as otherwise expressly provided—determine the matter as arbitrators, in which case, and where they are required so to act, the provisions of the Regulation of Railways Act, 1868 (*o*), respecting arbitrations by the Board of Trade and the enactments amending those provisions are to apply (*p*).

(*c*) 9 Edw. 7, c. 44, s. 58 (4).

(*d*) 9 Edw. 7, c. 44, s. 58 (6).

(*e*) S. 58 (5).

(*f*) A "building line" provision has been held not to come within either of these expressions: *In re Ellis and Ruislip-Northwood U. D. C.*, [1920] 1 K. B. 343.

(*g*) S. 59 (1).

(*i*) S. 59 (2).

(*k*) S. 60 (2).

(*l*) 53 & 54 Vict. c. 70.

(*m*) 9 Edw. 7, c. 44, s. 60 (1).

(*n*) 9 & 10 Geo. 5, c. 35, s. 40.

(*o*) 31 & 32 Vict. c. 119.

(*p*) 9 Edw. 7, c. 44, s. 62.

No person is to obtain compensation in respect of a town planning scheme in addition to compensation in respect of the same matter or thing under any other enactment, and the amount of compensation in respect of a town planning scheme must not exceed the amount recoverable in respect of the same matter or thing under any other enactment (*q*).

The Housing (Additional Powers) Act, 1919, makes provision for the compulsory acquisition of land by the Minister of Health or a local authority (*r*) for the purpose of its development by one or more local authorities or by any authorized association as a garden city, suburb, or village. The Minister has first to obtain the consent of the Treasury, and to consult with the Board of Trade, the Ministry of Agriculture and Fisheries, and the Minister of Transport (*s*). The provisions of Part III. of the Housing Acts, 1890 to 1919, are to apply for the purposes of the acquisition of land (*t*), whether by the Minister or a local authority. An authorized association is any society, company, or body of persons approved by the Minister and not trading for profit or whose constitution forbids payment of a rate of interest or dividend greater than that authorized for the time being by the Treasury (*u*). Garden cities.

The Towns Improvement Clauses Act, 1847 ("An Act for consolidating in one Act certain provisions usually contained in Acts for paving, draining, cleansing, lighting and improving Towns") (*x*), when incorporated with a special Act applies the provisions of the Lands Clauses Acts with certain minor amendments (*y*).

(*q*) S. 59 (3).

(*r*) S. 10 (3).

(*s*) 9 & 10 Geo. 5, c. 99, s. 10 (1); and see s. 15 (2).

(*t*) S. 10 (2).

(*u*) S. 10 (4), as amended by the Housing Act, 1921 (11 & 12 Geo. 5, c. 19), s. 6.

(*x*) 10 & 11 Vict. c. 34.

(*y*) Ss. 19—21 are the principal material clauses.

CHAPTER VI.

AGRICULTURE AND ALLIED PURPOSES.

Section I.—Small Holdings and Allotments.

Small
Holdings and
Allotments.

THE Small Holdings and Allotments Act, 1908 (*a*), consolidated the law dealing with the provision of allotments and small holdings by public authorities and with the acquisition of land for those purposes. This Act (called hereafter the principal Act) has been amended and extended by the Small Holdings Act, 1910 (*b*), the Small Holding Colonies Act, 1916 (*c*), the Acquisition of Land (Assessment of Compensation) Act, 1919 (*d*), and the Land Settlement (Facilities) Act, 1919 (*e*), which Acts now together form the code dealing with this subject.

Section 7 (2) of the Acquisition of Land (Assessment of Compensation) Act, 1919, provides that the provisions of that Act are to apply in the case of compulsory hiring under the principal Act (*f*) or any Act amending the principal Act, and that any matter required to be determined (under those Acts) by a valuer appointed by the Ministry of Agriculture and Fisheries is to be determined by an official arbitrator under the Acquisition of Land (Assessment of Compensation) Act, 1919.

It will be noticed that the wording of this sub-section differs somewhat from the wording of sub-section (1), which deals with

(*a*) 8 Edw. 7, c. 36, repealing 50 & 51 Vict. c. 48 (the Allotments Act, 1887); 53 & 54 Vict. c. 65 (the Allotments Act, 1890); 55 & 56 Vict. c. 31 (the Small Holdings Act, 1892).

(*b*) 10 Edw. 7 & 1 Geo. 5, c. 34.

(*c*) 6 & 7 Geo. 5, c. 38 (as amended and made perpetual by 9 & 10 Geo. 5, c. 59, sched. 3).

(*d*) 9 & 10 Geo. 5, c. 57 (see s. 7 (2)).

(*e*) 9 & 10 Geo. 5, c. 59.

(*f*) It is not thought that this is intended to have effect in any way as a repeal, but merely to bring compulsory hiring within the terms of s. 7 (1).

the compulsory acquisition of land as distinct from the compulsory hiring. Section 7 (1) provides that the provisions of the Act by which the land is authorized to be acquired or of any Act incorporated therewith are to have effect (in relation to matters dealt with by the Acquisition of Land, &c. Act, 1919) subject to the latter Act, and so far as inconsistent therewith are to cease to have or are not to have effect.

The principal Act is divided into three parts, the first dealing with small holdings, the second with allotments, and the third with general matters, including the acquisition of land.

Sections 7 (2) and 25 (2) empower county councils (and in certain cases the Ministry of Agriculture and Fisheries (*g*)), and in the case of allotments borough, urban district or parish councils to acquire land compulsorily (*h*) for small holdings (*i*) or allotments (*k*). Power to acquire land.

Sections 39—42 of the principal Act deal with the acquisition of land. Where a council propose to purchase land compulsorily they may submit to the Ministry an order (*l*) putting in force as respects the land specified in the order the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement (*m*), subject to the provisions set out in Part I. of the First Schedule to the Act. This Schedule must now be read in conjunction with the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919. The Schedule provides for the incorporation of the Lands Clauses

(*g*) S. 20; 9 & 10 Geo. 5, c. 59, ss. 3, 4.

(*h*) For the case of an injunction restraining a county council from serving a notice for acquisition of lands and interfering with a public auction sale, see *Gaskell v. Somersetshire C. C.* (1920), 18 L. G. R. 245.

(*i*) For the definition of small holding, see 8 Edw. 7, c. 36, ss. 42 and 61, and 9 & 10 Geo. 5, c. 59, ss. 17 and 20 (1). Cf. *Woodford Land and Building Co., Ltd. v. Woodford U. D. C.* (1921), 19 L. G. R. 559.

(*k*) See also 9 & 10 Geo. 5, c. 59, ss. 10 and 13.

(*l*) The order when confirmed by the Ministry is final and not open to review by the Court: *Ex parte Ringer* (1909), 25 Times L. R. 718. Cf. *R. v. Bedfordshire C. C.*, [1920] 2 K. B. 465; *Woodford Land and Building Co., Ltd. v. Woodford U. D. C.* (1921), 19 L. G. R. 559.

(*m*) S. 39 (1). The council have a power of entry on giving fourteen days' notice after service of notice to treat, and ss. 84—90 of the Lands Clauses Act, 1845, do not apply, though compensation plus interest must be paid in a like manner. But when this power is made use of, the council cannot thereafter withdraw under s. 39 (8): 9 & 10 Geo. 5, c. 59, s. 2.

Acts (*n*), subject to the necessary adaptations, and sections 77—85 of the Railways Clauses Consolidation Act, 1845 (*o*), but the arbitration is to be before an official arbitrator (*p*), who shall, so far as practicable, in assessing compensation act upon his own knowledge and experience, though he is to hear the parties or their agents and witnesses, but not (except in such cases as the Ministry direct) counsel or expert witnesses (*q*).

There are provisions as to costs and the payment of compensation monies with regard to ecclesiastical land similar to those already noticed under Part III. of the Housing Acts (*r*).

The Land Settlement (Facilities) Act, 1919, "repealed one of the steps necessary for acquiring powers, namely, the submission of the order to, and its confirmation by the Ministry of Agriculture (*s*), but it introduced, by section 10, a fetter upon the exercise of powers which had not existed before, that is to say, it rendered the consent of the Ministry necessary to the exercise of the powers" (*t*). The effect of this section is that the making of the order is conclusive evidence that it has been duly made and is *intra vires* (*u*).

Compulsory
hiring.

Where the council propose to hire land compulsorily (*x*), they may in a similar manner submit an order to the Ministry for hiring the land specified for any period not less than 14 nor more than 35 years (*y*), and the provisions of Part I. of the First Schedule apply in like manner as if the word "hiring" were substituted

(*n*) The provisions of these Acts with regard to the sale of superfluous lands are now expressly excepted: 9 & 10 Geo. 5, c. 59, s. 12 (3), *post*, p. 594.

(*o*) *Ante*, p. 131. As to the effect of this incorporation, see *Earl of Carlisle v. Northumberland C. C.* (1911), 105 L. T. 797.

(*p*) 9 & 10 Geo. 5, c. 57, s. 7 (1).

(*q*) Schedule I. par. 5.

(*r*) *Ante*, p. 365, and *post*, p. 577.

(*s*) S. 1 (1). The repeal is only a temporary one for three years from the passing of the Act of 1919.

(*t*) *R. v. Bedfordshire C. C.*, [1920] 2 K. B. 465, *per* Sankey, J., at p. 483; but see the exception to the necessity for consent contained in the last words of s. 10. Cf. *Gaskell v. Somersetshire C. C.* (1920), 18 L. G. R. 245.

(*u*) *Woodford Land and Building Co., Ltd. v. Woodford U. D. C.* (1921), 19 L. G. R. 559.

(*x*) Similar provisions apply as to entry by notice after notice to treat: *ante*, p. 94; 9 & 10 Geo. 5, c. 59, s. 2 (4).

(*y*) But subject to a right to renew the lease for a further similar period. In such a case, in reassessing the rent the arbitrator must not take into consideration any increase in value arising from the establishment of other small holdings or certain improvements: s. 44.

for "purchase," but subject to the modifications contained in Part II. of that Schedule (z), and in the Acquisition of Land Assessment of Compensation) Act, 1919 (a). The second part of the Schedule provides for the form of the lease to be granted, and sets out the matters which are to be determined by the official arbitrator in default of agreement. These are:—

- (a) The amount of rent to be paid by the council.
- (b) The amount of any other compensation to be paid by the council to any other person entitled in respect of the land or any interest therein or in respect of improvements executed on the land or otherwise.
- (c) Where part only of a holding held for an unexpired term is hired the rent to be paid for the residue of the holding during the remainder of the term (b).

Matters for arbitrator's determination.

There is a proviso which entitles a tenant in occupation to require, by notice in writing served on the council, that any claim he may have against the council under the Agricultural Holdings Act, 1908, may be determined under that Act, in which case the arbitration is to be under that Act and not under the principal Act.

The official arbitrator in fixing the rent is to take the following matters into consideration:—

- (a) The rent (if any) at which the land has been let.
- (b) Assessments for Income Tax and Rating.
- (c) Loss by severance.
- (d) Terms and conditions of the lease (including any reservation of sporting or fishing rights).
- (e) All other circumstances connected with the land.

But the arbitrator must not make any allowance in respect of any possible future user of the land for purposes for which the owner is entitled under the Act to resume possession (c).

The compensation to a tenant for severance is as far as possible to be provided for in fixing the rent that he is to pay for the land remaining in his possession (d).

The official arbitrator has wide powers of obtaining any assis-

(z) S. 39 (2). The wording of Schedule I., Part II., has been amended by 9 & 10 Geo. 5, c. 59, sched. 2; cf. *Knowles v. Salford Corporation* (1922), 38 Times L. R. 316.

(a) 9 & 10 Geo. 5, c. 57, s. 7 (2), *ante*, p. 321.

(b) Schedule I., Part II., par. 3; and see 9 & 10 Geo. 5, c. 57, s. 1 (1).

(c) Schedule I., Part II., par. 4.

(d) Schedule I., Part II., par. 5.

tance, information, or explanation he may require, and of inspecting any books, vouchers, accounts, &c. (*e*).

Easements.

Provision is made in the principal Act for the continuance of any existing easement or the creation of new easements, which matters would fall to be taken into consideration by the official arbitrator in fixing compensation. Where the land is hired new easements are to be created for the term of the hiring only (*f*).

Withdrawal of notice to treat after assessment of compensation.

When the amount of compensation or rent has been determined in respect of any land to be acquired or hired compulsorily the council may, if it appears that the land cannot be let for small holdings or allotments at such rent as to secure the council from loss, at any time within six weeks of the determination of the amount of compensation withdraw any notice to treat in respect of the land by a notice in writing. In such cases the persons who have been served with a notice of withdrawal may obtain compensation for any loss or expenses sustained or incurred by reason of the notices to treat and of withdrawal, and in default of agreement the amount of compensation is to be determined by arbitration (*g*).

Limited owners.

Certain limited owners are given powers to sell or lease land for the purposes of the Act (*h*).

Exempted lands.

Section 41 as modified by section 16 of the Land Settlement (Facilities) Act, 1919, protects from acquisition holdings of 50 acres or less in extent and land required for the amenity or convenience of a mansion house, woodlands not wholly surrounded by or adjacent to land acquired by a council under the Act, and land the property of any local authority or public undertaker or which is the site of an ancient monument or other object of archaeological interest (*i*).

Provision for resumption by owner.

The owner of land compulsorily hired can resume possession of the whole or part of such land, if he can show to the satisfaction of the Ministry that he requires it for building, mining, or other industrial purposes. He must give 12 months (*k*) notice in writing of his intention to resume, and where he resumes part only the amount of rent to be paid for the remainder must be determined in default of agreement by arbitration (*l*).

(*e*) Schedule I., Part II., par. 6.

(*f*) S. 39 (4).

(*g*) S. 39 (8); cf. 9 & 10 Geo. 5, c. 57, s. 5 (2).

(*h*) S. 40.

(*i*) And as to commons, &c., see 9 & 10 Geo. 5, c. 59, s. 28, *post*, p. 596.

(*k*) Or such shorter notice as may be required by the order for compulsory hiring: 9 & 10 Geo. 5, c. 59, sched. 2.

(*l*) 8 Edw. 7, c. 36, s. 46.

Provision is made for the payment of compensation for improvements by the council to its tenants (*m*) and by the owner to the council (*n*) and to the tenant in possession where notice to quit is given by the landlord or the council with a view to the land being used for small holdings (*o*). Compensation for improvements.

As above stated, the clauses of the Lands Clauses Acts dealing with superfluous lands do not apply to lands acquired under the principal Act (*p*). Section 15 of the principal Act and section 12 of the Land Settlement (Facilities) Act, 1919, deal with the disposal of superfluous land and give the council a free hand as to such disposal. But where the owner of a holding desires to use the holding for purposes other than agriculture, he must before doing so, offer it for sale first to the council and secondly to the original owner or his representatives. The principal Act applied sections 127—130 of the Lands Clauses Act, 1845, to such a transaction, but the effect of section 12 (3) of the Land Settlement (Facilities) Act, 1919, is apparently to repeal such application, leaving the procedure at large. Superfluous lands.

The Small Holding Colonics Act, 1916 (*q*), deals with the acquisition of land by agreement only, and for that purpose and for the sale of superfluous land incorporates the Lands Clauses Acts (*r*).

Section II.—Economic Development of Land, &c., and Road Improvement.

The Development and Road Improvement Funds Act, 1909 (*s*) (called hereinafter the Development Act), by Part I. constituted a body of Development Commissioners, with power to make orders (*t*) empowering government departments, public authorities, universities, colleges, schools, or institutions, or associations of persons or companies not trading for profit (*s*), to acquire land Powers of Development Commissioners.

(*m*) S. 47 (1), (3).

(*n*) S. 47 (2), and 9 & 10 Geo. 5, c. 59, s. 23.

(*o*) 10 Edw. 7 & 1 Geo. 5, c. 34. Cf. *In re Evans and Glamorgan C. C.* (1912), 28 Times L. R. 517.

(*p*) *Ante*, p. 372.

(*q*) 6 & 7 Geo. 5, c. 38, as amended by 8 & 9 Geo. 5, c. 26, and 9 & 10 Geo. 5, c. 59, sched. 3.

(*r*) S. 1 (4).

(*s*) 9 Edw. 7, c. 47, s. 1 (1), *post*, p. 581. Cf. Improvement of Land Act, 1864 (27 & 28 Vict. c. 114).

(*t*) S. 5 (1).

compulsory for the purposes specified in section 1 (1). The procedure as to the compulsory acquisition of land is set out in the Schedule to the Act (*u*).

Where the land is to be acquired compulsorily by a government department or any local or public authority (*x*), the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919 (*y*), will apply, but not otherwise.

The Schedule provides for the incorporation of the Lands Clauses Acts, and sections 77—85 of the Railways Clauses Consolidation Act, 1845 (*z*), in the draft order (*a*), subject to certain modifications. The reference is to a single arbitrator, appointed by the Lord Chief Justice, who has special powers as to costs. There is no additional allowance for compulsory purchase, and there is a set-off of any betterment (*b*).

Section 5 (2) of the Development Act protects from acquisition such places as parks, gardens, home farms, and the property of local authorities and public undertakings, &c., and ancient monuments, &c.

The provisions of the Lands Clauses Acts as to the sale of superfluous lands are not to apply (*c*).

A portion only of a building may be acquired if the arbitrator is of opinion that severance will not be materially detrimental to the owner, and in such case compensation is to be paid for severance (*d*).

The order may provide for the continuance of existing easements or the creation of new easements (*e*).

Compensation monies for glebe, &c., are to be paid to the Ecclesiastical Commission (*f*).

Powers of Road Board.

Part II. of the Development Act deals with road improvement, and constitutes a Road Board with power to make advances to highway authorities for roads, and thereafter to authorize them

(*u*) *Post*, p. 585.

(*x*) *Vide ante*, p. 320.

(*y*) 9 & 10 Geo. 5, c. 57, ss. 1, 7, 12.

(*z*) *Ante*, p. 131.

(*a*) Pars. 1 and 2.

(*b*) Par. 2 (a), (b), (c). *Vide ante*, p. 315.

(*c*) Par. 2 (d).

(*d*) Par. 4.

(*e*) Par. 5.

(*f*) Par. 6.

to construct and maintain new roads (*g*). Where the highway authority are under the Act constructing or improving roads they may acquire the necessary land (*h*). Where the Road Board are constructing a new road they may acquire the necessary land, and land on either side within 220 yards of the *medium filum* (*i*). Where it is necessary for either authority to obtain compulsory powers, the provisions of the Schedule to the Development Act (*k*) apply.

The Road Board have power, with Treasury approval, to sell superfluous lands (*l*). Provisions as to the protection of commons, open spaces, and allotments are included (*m*).

Under the Land Drainage Acts (*n*), the commissioners having powers under those Acts are authorized in certain cases to acquire land compulsorily, and also to remove, in certain cases, mill dams, weirs, &c. In every case compensation is payable in accordance with the Lands Clauses Acts, which are incorporated. Land Drainage.

Under the Commons Act, 1899 (*o*), local authorities under a scheme for the regulation of a common have to pay compensation for the extinction or injurious affection of outstanding rights under the provisions of the Lands Clauses Acts. Commons.

Foreshore rights and easements can be acquired compulsorily under an order made under the Salmon and Fresh Water Fisheries Act, 1907 (*p*). Foreshore.

The Forestry Commissioners, established under the Forestry Act, 1919 (*q*), have power to acquire land compulsorily for the purposes of the Act under an order made by the Development Commissioners, the provisions being, with minor variations, similar to those contained in the Development Act (*r*). Forestry.

(*g*) Ss. 8 and 10.

(*h*) S. 11 (3).

(*i*) S. 11 (1).

(*k*) *Ante*, p. 376, and *post*, p. 585.

(*l*) S. 11 (6).

(*m*) S. 19.

(*n*) 10 & 11 Vict. c. 38, ss. 8, 9, 10 and 11; 24 & 25 Vict. c. 133, ss. 17, 20, 26, 28. The Land Drainage Act, 1914 (5 & 6 Geo. 5, c. 4), was of temporary duration only (s. 4 (2)), and applied the Development Act, s. 1 (d).

(*o*) 62 & 63 Vict. c. 30, s. 6.

(*p*) 7 Edw. 7, c. 15, ss. 1, 2 (1) (e), 2 (2). See also as to compensation in connection with fishery harbours, the Fishery Harbours Act, 1915 (5 & 6 Geo. 5, c. 48), s. 2 (6).

(*q*) 9 & 10 Geo. 5, c. 58. The principal material sections are ss. 3 (3) (b), 7, and the Schedule.

(*r*) 9 Edw. 7, c. 47, *ante*, p. 375.

CHAPTER VII.

PROVISION OF PUBLIC SERVICES BY STATE OR LOCAL AUTHORITIES.

Telegraphs. THE Postmaster-General has power to place telegraphic lines (*a*) in, on, or over any lands or building, including both public property, such as streets, &c., and private property. There are special provisions in the Telegraph Acts, 1863 to 1916, for the protection of local authorities (*b*), public undertakers, and the managers of public recreation grounds, under which rights in respect of streets, railways, canals, recreation grounds, &c., are dealt with.

The Telegraph Acts, 1863 to 1916, contain a series of provisions for the payment of compensation where property, rights or interests are acquired compulsorily, or damage or injury is caused by the execution or maintenance of telegraph works. The procedure to be adopted for the assessment of compensation is in the main that authorized by the Lands Clauses Acts, and the Acquisition of Land (Assessment of Compensation) Act, 1919; there are various exceptions which are of minor importance only (*c*).

Where private property is concerned, the Telegraph (Construction) Act, 1916 (*d*), provides that if the owner, lessee, or occupier of any land or building refuses or fails to give his consent to the placing of lines across his land or building within two months after receiving notice (*e*), a difference is deemed to have arisen, and sections 3, 4 and 5 of the Telegraph Act of 1878 apply (*d*).

(*a*) Which expression includes telephones: *Att.-Gen. v. Edison Telephone Co. of London* (1880), 6 Q. B. D. 244. Cf. *P.M.G. v. Edinburgh Corporation* (1899), 10 Ry. & C. T. C. 247.

(*b*) *P.M.G. v. London Corporation* (1898), 14 Times L. R. 222; *P.M.G. v. Edinburgh Corporation* (1899), 10 Ry. & C. T. C. 247.

(*c*) Act of 1863, ss. 27 (2), 28, 29; Act of 1868, s. 9; Act of 1869, s. 10; Act of 1878, s. 13, &c. As to a case of compensation for damage occasioned by the execution of telegraph works to electric mains, see *St. James' and Pall Mall Electric Light Co., Ltd. v. R.* (1904), 73 L. J. K. B. 518.

(*d*) 6 & 7 Geo. 5, c. 40, s. 1. The Acquisition of Land (Assessment of Compensation) Act, 1919, does not appear to apply, as the Postmaster-General has no power of compulsory acquisition save by the decision of the tribunal.

(*e*) 41 & 42 Vict. c. 76, s. 12.

Where such a difference has arisen it is referred to the arbitration (*f*) of a police or stipendiary magistrate (or failing him a County Court judge), with an appeal to the Railway and Canal Commission (*g*). The tribunal may, if after hearing the parties they think it just, give their consent either unconditionally or subject to such pecuniary or other terms, conditions, or stipulations as they may think just (*h*), provided that the consent shall not be given unless the tribunal is satisfied that the owner's refusal is contrary to the public interest (*i*). In deciding as to the consent or terms (which may include the lines being carried underground), the tribunal shall have regard *inter alia* to the effect upon the amenities or value of the land (*i*). It is very unusual for any order to be made that a rental shall be paid to the owner of a street or public road for the erection of telegraph posts. There is, in fact, no recorded case (*k*).

In the case of emergency in connection with construction or maintenance, the Postmaster-General has an absolute right of entry; otherwise, on failure to agree, he must apply to the tribunal (*l*).

The Postmaster-General, with the consent of the Treasury, may Post Office. purchase land (which expression includes easements) for the purpose of the Post Office (*m*). For this purpose the Lands Clauses Acts with minor variations are incorporated, but the compulsory provisions are not to be put in force until the sanction of Parliament has been obtained (*n*), and are thereupon subject to the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919.

There are analogous provisions whereby land may be acquired Naval and military, &c. works. by agreement or compulsorily for naval, military, and kindred

(*f*) As to procedure, &c., see *post*, p. 600.

(*g*) Which is a re-hearing: *P.M.G. v. Hutchings*, [1916] 1 K. B. 774. See 8 Edw. 7, c. 33, s. 6.

(*h*) 41 & 42 Vict. c. 76, ss. 3, 4 and 5.

(*i*) 6 & 7 Geo. 5, c. 40, s. 1.

(*k*) *P.M.G. v. Hutchings*, [1916] 1 K. B. 774, *per* Lush, J., at p. 777.

(*l*) S. 4.

(*m*) Post Office Act, 1908 (8 Edw. 7, c. 48), s. 46 (1).

(*n*) The procedure is for the Postmaster-General to serve notice on the owners and occupiers concerned asking for assent or objections; the Treasury holds a local inquiry and if satisfied submits a public Bill to Parliament. There is provision for a reference to a select committee if the Bill is petitioned against: s. 46 (2).

purposes (*o*). The statutory provisions are principally contained in the following Acts, which incorporate the Lands Clauses Acts with minor variations, and are subject to the provisions of the Acquisition of Land (Assessment of Compensation) Act, 1919:—Customs Consolidation Act, 1853 (16 & 17 Vict. c. 107), ss. 333—345; Coastguard Service Act, 1856 (19 & 20 Vict. c. 83), s. 5; Admiralty Lands and Works Act, 1864 (27 & 28 Vict. c. 57); Customs Buildings Act, 1879 (42 & 43 Vict. c. 36), ss. 5 and 6; Military Lands Act, 1892 (55 & 56 Vict. c. 43); Merchant Shipping Act, 1894 (57 & 58 Vict. c. 60) (Lighthouses), s. 639; Naval Works Act, 1895 (58 & 59 Vict. c. 35), s. 2; Military Manœuvres Act, 1897 (60 & 61 Vict. c. 43), s. 6; Military Lands Act, 1900 (63 & 64 Vict. c. 56), ss. 3 & 4; Territorial and Reserve Forces Act, 1907 (7 Edw. 7, c. 9), s. 4 (1) (*c*); Naval Lands (Volunteers) Act, 1908 (8 Edw. 7, c. 25).

Education.

The Education Act, 1921 (*p*), which is a consolidating Act repealing the majority of the earlier Acts, provides in Part IX. (*q*) for the acquisition, appropriation, and alienation of land required for the purposes of the Act. Where land is purchased by agreement the Lands Clauses Acts are incorporated (*r*); in the case of compulsory purchase an order of the Board of Education has to be obtained in accordance with the provisions of the Fifth Schedule, and the Lands Clauses Acts as modified by the Acquisition of Land (Assessment of Compensation) Act, 1919 (*s*), together with sections 77—85 of the Railways Clauses Consolidation Act, 1845 (*t*), are to be incorporated, subject to the necessary adaptations, in the order. The Act contains (*u*) provisions as to user for other purposes of land held for educational purposes similar to those in the Public Health Acts Amendment Act, 1907 (*w*), and the provisions of the Charitable Trusts Acts are applied to the sale, leasing, and exchange of superfluous lands or buildings (*x*).

(*o*) See also Defence Act, 1842, *ante*, p. 335.

(*p*) 11 & 12 Geo. 5, c. 51, *post*, p. 608.

(*q*) Ss. 109—117 and sched. 5.

(*r*) S. 110. S. 116 extends these powers to managers and others.

(*s*) *Ante*, p. 319; *post*, p. 478.

(*t*) The mines and minerals clauses, *ante*, p. 131; *post*, p. 452.

(*u*) S. 114; and see s. 113.

(*w*) *Post*, pp. 518, 519.

(*x*) S. 115.

Certain other local or public authorities have the power to acquire land for the purposes of institutions of various kinds. The principal of these powers are as follows:—

Under the Prisons Acts, 1865 (*y*) and 1884 (*z*), the prison authority or the Secretary of State may acquire lands for the building, enlarging, altering, &c. of prisons, the Lands Clauses Acts being applied. Prisons.

Under the Isolation Hospitals Act, 1893 (*a*), the hospital committee, subject to the directions of the county council, may acquire land for hospitals, the Public Health Acts (*b*) being applied for this purpose. Isolation Hospitals.

Under the Diseases of Animals Act, 1894 (*c*), the local authority may acquire land for wharves, stations, lairs, &c. Diseases of animals.

Under the Mental Deficiency Act, 1913 (*d*), land may be acquired by the local authority for asylums, &c., the Local Government Act, 1888 (*e*) (in the case of a county council), and the Public Health Acts (*f*) (in the case of the council of a county borough), being applied. Asylums.

Under the provisions of the Open Spaces Act, 1906 (*g*), which gives power to provide open spaces, &c., the local authority is not to take away or injuriously affect any estate, interest, or right of a profitable or beneficial nature over or affecting an open space or burial ground without paying compensation. The compensation is to be ascertained and provided in the same manner as if it were compensation for lands purchased and taken otherwise than by agreement or injuriously affected under the Lands Clauses Acts. Open spaces.

(*y*) 28 & 29 Vict. c. 126, ss. 44 and 45.

(*z*) 47 & 48 Vict. c. 51, s. 2.

(*a*) 56 & 57 Vict. c. 68, s. 11.

(*b*) *Ante*, p. 338.

(*c*) 57 & 58 Vict. c. 57, ss. 32 and 33.

(*d*) 3 & 4 Geo. 5, c. 28, s. 38 (3).

(*e*) *Ante*, p. 345.

(*f*) *Ante*, p. 338.

(*g*) 6 Edw. 7, c. 25, s. 13.

CHAPTER VIII.

PROVISION OF PUBLIC SERVICES BY RAILWAY COMPANIES AND OTHER
SEMI-PUBLIC OR PRIVATE AUTHORITIES.

How far
Acquisition of
Land (Assess-
ment of Com-
pensation)
Act, 1919,
applicable.

IN the case of a variety of public utility services, special statutory provision has been made for the assistance of the promoters or undertakers in the acquisition of land. These classes include both cases where the undertakers are a semi-public body (*e.g.*, in some cases waterworks or electric light undertakings, port and harbour authorities), and cases where the undertakers are a private company or association (*e.g.*, railways, waterworks, gas and electric light companies). With regard to the former category, it has been held (*a*) that the intention of the legislature in passing the Acquisition of Land (Assessment of Compensation) Act, 1919 (*b*), is to draw a distinction between a body of persons, such as an ordinary railway company, which trades for profit, and a body of persons who are unlike a railway company, inasmuch as they do not trade for the purpose of making a profit which would be available for the purpose of division in the form of dividend. The true meaning of the section (*c*) is to include within the term "public authority" any body of persons authorized by statute to carry on a public undertaking which does not trade with the object of making profits for themselves, or of distributing profit as dividend (*d*). So far, therefore, as the bodies or authorities mentioned in this chapter come within this decision, the Act of 1919 will apply.

Most of the relevant provisions of the Railways and Waterworks Clauses Acts have been already dealt with in Book I., as they are closely bound up with the consideration of the Lands Clauses Acts; it only remains to mention some special provisions in the case of railways, and to refer shortly to certain statutes dealing with semi-public or private undertakings of public utility.

(*a*) *Metropolitan Water Board v. Berton*, [1921] 1 Ch. 299.

(*b*) 9 & 10 Geo. 5, c. 57. *Vide ante*, Book II., Chap. I., p. 315.

(*c*) S. 12 (2) of the Act of 1919.

(*d*) See note (*a*), *supra*.

Railways (*dd*).

A procedure whereby, after the promoters of a railway have contracted by agreement for the purchase of all the lands, &c. required, their scheme may be authorized by certificate of the Board of Trade, laid before and not objected to by Parliament, is contained in the Railways Construction Facilities Act, 1864 (*e*). Little use, however, has been or is likely to be made of this form of procedure.

Railways
Construction
Facilities Act,
1864.

In one matter of detail, there is a special provision in the case of railway companies which makes the procedure different from that of the Lands Clauses Acts. It is provided under section 36 of the Railway Companies Act, 1867 (*f*), that a surveyor appointed under section 85 of the Lands Clauses Act, 1845, should in the case of railways be appointed by the Board of Trade instead of by two justices, and that the sureties required to the bond should be approved by the Board of Trade instead of by two justices. Such approval is only necessary when the parties differ (*g*).

Special provision as to
appointment
of surveyor
under s. 85 of
L. Cl. Act,
1845.

In connection with the electrification of railways under the Railways (Electrical Power) Act, 1903 (*h*), the Board of Trade order may contain provisions authorizing the acquisition of land for generating stations, &c., but if the order gives any compulsory powers in this respect, such powers require Parliamentary confirmation.

Electrifica-
tion.

In the case of the abandonment of railways, provision was made by the Abandonment of Railways Acts, 1850 and 1869 (*i*), for compensation to the various classes of owners who have suffered by the construction of abandoned works or by the abandonment. As, however, such an abandonment can only be effected under warrant of the Board of Trade, the grant of which is discretionary, and the Board has adopted the view that its powers only apply to railways authorized before 1867, the Acts have now little or no practical importance, a special Act being in effect necessary in each case to authorize an abandonment.

Abandon-
ment Acts
of 1850
and 1869.

(*dd*) A certain number of cases dealing with minor points under the Railway Acts have been inserted as notes to the Acts, *post*, p. 440 *et seqq.*

(*e*) 27 & 28 Vict. c. 121.

(*f*) *Post*, p. 458.

(*g*) *Loosemore v. Tiverton, &c. Rail. Co.* (1882), 22 Ch. D. 25, 40.

(*h*) 3 Edw. 7, c. 30, s. 2.

(*i*) 13 & 14 Vict. c. 83; 32 & 33 Vict. c. 114.

Parliamentary Deposits and Bonds Act, 1892.

By the Parliamentary Deposits and Bonds Act, 1892 (*k*), it is enacted that where in pursuance of any general or special Act, or rules made thereunder (*l*), a deposit is standing in the name of the Paymaster-General, and the undertaking has not been completed within the time limited, the High Court may, notwithstanding anything in the general or special Act or rules, order the deposit fund to be applied towards compensating any landowners or other persons whose property has been interfered with or otherwise rendered less valuable by the commencement, construction, or abandonment of the undertaking, or any portion thereof, or who have been subjected to injury or loss in consequence of any compulsory powers of taking property given in connection with the undertaking, and have received no compensation or inadequate compensation for such injury or loss (*m*).

The powers of the High Court cannot be exercised until the time limited has expired (*n*), or the promoters have put it out of their power to complete (*o*); but since the passing of the Act of 1892 it is no longer necessary for a special Abandonment Act to be passed before an order can be made dealing with the deposit fund, provided the fact of non-completion within the time limited is established (*p*).

The compulsory powers of taking property are not exercised by the mere service of a notice to treat (*q*), even if followed by a contract so as to entitle the landowner to a prior claim on the deposit fund given under the terms of a special Act (*r*).

The words "by the commencement, construction, or abandonment of the undertaking" must be read disjunctively, and the landowner's claim may be for injury from any one of these causes. The measure of the injury must be determined by comparing the value of the estate immediately before and immediately after the act or acts of the promoters on which the claim is based. The injury must be a necessary consequence of the action on which the

(*k*) 55 & 56 Vict. c. 27, s. 1 (*l*), *post*, p. 609.

(*l*) *E.g.*, the Tramways Act, 1870, and the Board of Trade Rules, 1892, made thereunder.

(*m*) There is a further provision for compensation to road authorities in the case of tramway companies.

(*n*) *Ex parte Chambers*, [1893] 1 Ch. 47.

(*o*) *In re the Peckham, &c. Tramways Bill*, [1910] 2 Ch. 1.

(*p*) *Re Torrington and Okehampton Railway Bill*, 1895, [1907] 1 Ch. 186.

(*q*) *Vide ante*, p. 55.

(*r*) *Re Uxbridge and Rickmansworth Rail. Co.* (1890), 43 Ch. D. 536.

claim is based; the mere existence of a collateral covenant (*s*) may increase the value of the land, but the breach of such a covenant must not be confused with (*e.g.*) the abandonment of the railway. If the abandonment and the breach are indistinguishable, then the case may be within the Act, but when you can distinguish between them, the claim can only be made in respect of the abandonment (*t*).

Applications relating to deposit funds are made in chambers to a judge of the Chancery Division under R. S. C., O. LV r. 2 (6).

Light Railways.

The Light Railways Acts, 1896 (*u*) and 1912 (*v*), and Part V. of the Railways Act, 1921 (*x*), enacted "for the purpose of facilitating the construction and working of light railways in Great Britain," make provision for orders subject to confirmation by the Minister of Transport. The Lands Clauses Acts and other Clauses Acts may or may not be incorporated in the order, and if incorporated may be incorporated with modifications such as are made or authorised to be made by the Development and Road Improvement Funds Act, 1909 (*y*). Light Railways.

Section 13 of the Act of 1896 provides that all questions of compensation shall be determined by a single arbitrator appointed by the parties, or, if they do not concur, by the Board of Trade (*z*). The arbitrator, in determining the amount of compensation, is directed to have regard to the extent to which the remaining and contiguous lands and hereditaments belonging to the same pro- Compensation under.
Betterment.

(*s*) Cf. *In re West Yorkshire Tramways Act*, 1906, [1913] 1 Ch. 170.

(*t*) *In re Potteries, &c. Rail. Co.* (1883), 25 Ch. D. 251; *In re Ruthin, &c. Railway Act* (1886), 32 Ch. D. 438; *In re Southport and Lytham Tramroad Act*, 1900, [1911] 1 Ch. 120.

(*u*) 59 & 60 Vict. c. 48; *post*, p. 614.

(*v*) 2 & 3 Geo. 5, c. 19; *post*, p. 618.

(*x*) 11 & 12 Geo. 5, c. 55, ss. 68—74; *post*, p. 619.

(*y*) Ss. 11 and 12 of 1896 Act, and s. 69 of the 1921 Act; as to the provisions of the Development, &c. Act, 1909, *vide post*, p. 581.

(*z*) The effect of ss. 8 and 9 of the Act of 1912, which deal with "any matters which under any order are to be determined by arbitration," upon the above provision is by no means clear. Such matters would not appear to include the assessment of compensation, which is dealt with by s. 13 of the Act of 1896 and not by the order; but cf. *contra* in the case of a special Act the words of Lindley, M. R., in *London and North Western Rail. Co. v. Runcorn R. D. Co.*, [1898] 1 Ch. 561, at p. 563.

prietor may be benefited by the proposed light railway. This principle, of allowing a set-off to the extent to which the remaining and contiguous lands of the same proprietor may be benefited by the proposed light railway, is new in its application to railways, and it is difficult to draw any distinction in principle between a light railway and an ordinary railway subject to the usual Board of Trade regulations.

Arbitration
Act, 1889, in-
corporated.

By section 13 (3) of the Act of 1896, the Arbitration Act, 1889, "shall apply to any arbitration under this section," while as a general practice the Lands Clauses Acts are also incorporated. This has given rise to some difficulties in view of the difference in the provisions of the two Acts as to arbitrations. It has been held that the effect of section 13 is to substitute a single arbitrator for the tribunals theretofore existing for the assessment of compensation in all cases, but that the new legislation (applying the Arbitration Act, 1889) only extends to the assessment of the amount of compensation and the basis of the assessment, and does not extend to the enforcing of the award after it has been made. The award therefore remains enforceable as it was under the Lands Clauses Act, 1845, s. 35, unaffected, in this respect, by the Arbitration Act, 1889 (*a*). And similarly where the arbitrator awards costs to be paid by one of the parties to the submission, either party can require, under the Lands Clauses (Taxation of Costs) Act, 1895, that the costs shall be taxed and settled by one of the Masters of the Supreme Court, whose decision is not open to review (*b*).

On the other hand it has been held that the costs of the reference and award are in the discretion of the arbitrator in view of the fact that the Arbitration Act, 1889, applies, and notwithstanding the incorporation of the Lands Clauses Acts (*c*).

Section 4 of the Act of 1912 gives power to modify section 92 of the Lands Clauses Act, 1845 (*d*), as to taking part of a house, &c., except where the part cannot be severed without material detriment.

(*a*) *R. v. Barton and Immingham Light Rail. Co.*, [1912] 3 K. B. 72, *per* Lord Alverstone, C. J.

(*b*) *In re Cannings, Ltd. and Middlesex C. Co.*, [1907] 1 K. B. 51 (C. A.). See also the Light Railways (Costs) Rules, 1898, S. R. & O. 1898, No. $\frac{496}{113}$.

(*c*) *Baxter v. Midland Rail. Co.* (1905), 93 L. T. 538; and see *S. C.* (1906), 95 L. T. 20.

(*d*) See *ante*, p. 35.

Miscellaneous "Clauses Acts."

The various "Clauses Acts," such as the Towns Improvement Clauses Act, 1847 (10 & 11 Vict. c. 34), the Harbours, Docks and Piers Clauses Act, 1847 (10 & 11 Vict. c. 27) (*e*), the Markets and Fairs Clauses Act, 1847 (10 & 11 Vict. c. 14), the Cemeteries Clauses Act, 1847 (10 & 11 Vict. c. 65), the Gas and Water Works Facilities Act, 1870 (33 & 34 Vict. c. 70), the Electric Lighting (Clauses) Act, 1899 (62 & 63 Vict. c. 19), introduce no new principles of compensation, incorporating the whole or part of the Lands Clauses Acts as occasion requires. The Electricity (Supply) Act, 1919 (9 & 10 Geo. 5, c. 100), contains in section 22 (with certain special safeguards for railways, canals, and docks, &c.) provisions for the acquisition of compulsory wayleaves with the consent of the Board of Trade, the provisions being substantially similar to those in the Telegraph Acts (*f*), and there are somewhat similar provisions for compulsory purchase in the Lloyd's Signal Stations Act, 1888 (*g*).

The Brine Pumping (Compensation for Subsidence) Act, 1891 (*h*), makes provision in certain districts and under certain circumstances for the award by a "Compensation Board" of compensation for subsidence due to brine pumping.

(*e*) Cf. *Liverpool and North Wales Steamship Co., Ltd. v. Mersey Trading Co., Ltd.*, [1909] 1 Ch. 209.

(*f*) *Ante*, p. 378.

(*g*) 51 & 52 Vict. c. 29, s. 2.

(*h*) 54 & 55 Vict. c. 40; and see the Housing and Town Planning, &c. Act, 1919 (9 & 10 Geo. 5, c. 35), s. 36.

APPENDIX OF STATUTES.



BOOK I.

Section I.—Lands Clauses Acts.

THE LANDS CLAUSES CONSOLIDATION ACT, 1845 (a).

8 & 9 VICT. c. 18.

An Act for consolidating in one Act certain Provisions usually inserted in Acts authorizing the taking of Lands for Undertakings of a Public Nature.

Amended as to Ireland by 14 & 15 Vict. c. 70.

[8th May, 1845.]

[Whereas it is expedient to comprise in one general act sundry provisions usually introduced into acts of parliament relative to the acquisition of lands required for undertakings or works of a public nature, and to the compensation to be made for the same, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves; May it therefore please your Majesty that it may be enacted, and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal and Commons in this present parliament assembled, and by the authority of the same, that (b)] This act shall apply to every undertaking authorized by any act which shall hereafter be passed, and which shall authorize the purchase or taking of lands for such undertaking, and this act shall be incorporated with such act, and all the clauses and provisions of this act save so far as they shall be expressly varied or excepted by any such act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other act which shall be incorporated with such act, form part of such act, and be construed together therewith as forming one act.

Act to apply to all undertakings authorized by acts hereafter to be passed.

(a) The Act is printed in full, notwithstanding the various formal and substantial repeals, inasmuch as, before the repeals, it was incorporated in many Special Acts, to which the repeal probably does not extend.

(b) Repealed by Statute Law Revision Act, 1891, s. 1.

(Interpretation and Citation.)

Interpreta-
tions in this
act :

“special
act :”

“pre-
scribed :”

“the works :”

“promoters
of the under-
taking :”

Interpreta-
tions in this
and the
special act :

Number :

Gender :

“lands :”

“lease :”

“month :”

“superior
courts :”

“oath :”

“county :”

And with respect to the construction of this act and of acts to be incorporated therewith, be it enacted as follows:—

2. The expression “the special act” used in this act shall be construed to mean any act which shall be hereafter passed which shall authorize the taking of lands for the undertaking to which the same relates, and with which this act shall be so incorporated as aforesaid; and the word “prescribed,” used in this act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special act, and the sentence in which such words shall occur shall be construed as if, instead of the word “prescribed,” the expression “prescribed for that purpose in the special act” had been used; and the expression “the works” or “the undertaking” shall mean the works or undertaking, of whatever nature, which shall by the special act be authorized to be executed; and the expression “the promoters of the undertaking” shall mean the parties, whether company, undertakers, commissioners, trustees, corporations, or private persons, by the special act empowered to execute such works or undertaking (c).

3. The following words and expressions, both in this and the special act, shall have the several meanings hereby assigned to them, unless there be something either in the subject or context repugnant to such construction; (that is to say,)

Words importing the singular number only shall include the plural number, and words importing the plural number only shall include the singular number (d):

Words importing the masculine gender only shall include females (d):

The word “lands” shall extend to messuages, lands, tenements and hereditaments, of any tenure (e):

The word “lease” shall include an agreement for a lease:

The word “month” shall mean calendar month (d):

The expression “superior courts” shall mean her Majesty’s superior courts of record at Westminster or Dublin, as the case may require:

The word “oath” shall include affirmation in the case of Quakers, or other declaration lawfully substituted for an oath in the case of any other persons exempted by law from the necessity of taking an oath (f):

The word “county” shall include any riding or other like division of a county, and shall also include county of a city or county of a town (g):

(c) *Vide ante*, p. 47.

(d) See Interpretation Act, 1889 (52 & 53 Vict. c. 63), s. 1.

(e) *Vide ante*, p. 8.

(f) See Interpretation Act, 1889, s. 3.

(g) See Interpretation Act, 1889, s. 4, which applies to special acts passed after 1850.

The word "sheriff" shall include under-sheriff, or other legally competent deputy; and where any matter in relation to any lands is required to be done by any sheriff, or by any clerk of the peace, the expression "the sheriff," or the expression "the clerk of the peace," shall in such case be construed to mean the sheriff or the clerk of the peace of the county, city, borough, liberty, cinque port, or place where such lands shall be situate; and if the lands in question, being the property of one and the same party, be situate not wholly in one county, city, borough, liberty, cinque port, or place, the same expression shall be construed to mean the sheriff or clerk of the peace of any county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate:

"the clerk of the peace:"

The word "justices" shall mean justices of the peace acting for the county, city, liberty, cinque port, or place, where the matter requiring the cognizance of any such justice shall arise, and who shall not be interested in the matter; and where such matter shall arise in respect of lands being the property of one and the same party, situate not wholly in any one county, city, borough, liberty, cinque port, or place, the same shall mean a justice acting for the county, city, borough, liberty, cinque port, or place where any part of such lands shall be situate, and who shall not be interested in such matter; and where any matter shall be authorized or required to be done by two justices, the expression "two justices" shall be understood to mean two justices assembled and acting together:

"two justices:"

Where under the provisions of this or the special act, or any act incorporated therewith, any notice shall be required to be given to the owner of any lands, or where any act shall be authorized or required to be done with the consent of any such owner, the word "owner" shall be understood to mean any person or corporation who, under the provisions of this or the special act, would be enabled to sell and convey lands to the promoters of the undertaking:

"owner:"

The expression "the bank" shall mean the Bank of England where the same shall relate to moneys to be paid or deposited in respect of lands situate in England, and shall mean the Bank of Ireland where the same shall relate to moneys to be paid or deposited in respect of lands situate in Ireland.

"the bank."

4. [And be it enacted that] (h) in citing this act in other acts of parliament, and in legal instruments, it shall be sufficient to use the expression "The Lands Clauses Consolidation Act, 1845" (i).

Short title of the act.

(h) Repealed, S. L. R. Act, 1891, s. 1.

(i) Extended to all instruments and documents by Interpretation Act, 1889, s. 35 (1). For the meaning of the expression "Lands Clauses Acts" in any Act passed after 1st January, 1890, cf. Interpretation Act, 1889, s. 23.

(Mode of partial Incorporation.)

Form in which portions of this act may be incorporated with other acts.

5. And whereas it may be convenient in some cases to incorporate with acts of parliament hereafter to be passed some portion only of the provisions of this act: be it therefore enacted, that, for the purpose of making any such incorporation, it shall be sufficient in any such act to enact that the clauses of this act with respect to the matter so proposed to be incorporated (describing such matter as it is described in this act in the words introductory to the enactment with respect to such matter) shall be incorporated with such act, and thereupon all the clauses and provisions of this act with respect to the matter so incorporated shall, save so far as they shall be expressly varied or excepted by such act, form part of such act, and such act shall be construed as if the substance of such clauses and provisions were set forth therein with reference to the matter to which such act shall relate (*k*).

(Purchase of Lands by Agreement (l).)

And with respect to the purchase of lands by agreement, be it enacted as follows:

Power to purchase lands by agreement.

6. Subject to the provisions of this and the special act it shall be lawful for the promoters of the undertaking to agree with the owners of any lands by the special act authorized to be taken, and which shall be required for the purposes of such act, and with all parties having any estate or interest in such lands, or by this or the special act enabled to sell and convey the same, for the absolute purchase, for a consideration in money, of any such lands, or such parts thereof as they shall think proper, and of all estates and interests in such lands of what kind soever.

Parties under disability enabled to sell and convey.

7. It shall be lawful for all parties, being seised, possessed of, or entitled to any such lands, or any estate or interest therein, to sell and convey or release the same to the promoters of the undertaking, and to enter into all necessary agreements for that purpose; and particularly it shall be lawful for all or any of the following parties so seised, possessed, or entitled as aforesaid so to sell, convey, or release; (that is to say) all corporations, tenants in tail or for life, married women seised in their own right or entitled to dower, guardians, committees of lunatics and idiots, trustees or feoffees in trust for charitable or other purposes, executors and administrators, and all parties for the time being entitled to the receipt of the rents and profits of any such lands in possession or subject to any estate in dower, or to any lease for life, or for lives and years, or for years, or any less interest; and the power so to sell and convey or release as aforesaid may lawfully be exercised by all such parties, other than married women entitled to dower, or lessees for life, or for lives and years, or for years, or for any less interest, not only on behalf of themselves, and their respective heirs, executors, administrators and successors, but also for and on behalf of every person entitled in

(*k*) See Interpretation Act, 1889, s. 35 (2), (3).

(*l*) *Ante*, p. 53.

reversion, remainder, or expectancy after them or in defeasance of the estates of such parties, and as to such married women, whether they be of full age or not, as if they were sole and of full age, and as to such guardians, on behalf of their wards, and as to such committees, on behalf of the lunatics and idiots of whom they are the committees respectively, and that to the same extent as such wives, wards, lunatics, and idiots respectively could have exercised the same power under the authority of this or the special act if they had respectively been under no disability, and as to such trustees, executors, and administrators, on behalf of their cestui que trusts, whether infants, issue unborn, lunatics, femmes covert, or other persons, and that to the same extent as such cestui que trusts respectively could have exercised the same powers under the authority of this and the special act if they had respectively been under no disability (*m*).

8. The power hereinafter (*n*) given to enfranchise copyhold lands, as well as every other power required to be exercised by the lord of any manor pursuant to the provisions of this or the special act, or any act incorporated therewith, and the power to release lands from any rent, charge, or incumbrance, and to agree for the apportionment of any such rent, charge, or incumbrance shall extend to and may lawfully be exercised by every party hereinbefore enabled to sell and convey or release lands to the promoters of the undertaking.

Parties under disability to exercise other powers.

9. The purchase-money or compensation to be paid for any lands to be purchased or taken from any party under any disability or incapacity, and not having power to sell or convey such lands except under the provisions of this or the special act, and the compensation to be paid for any permanent damage or injury to any such lands, shall not, except where the same shall have been determined by the verdict of a jury, or by arbitration, or by the valuation of a surveyor appointed by two justices under the provision hereinafter contained, be less than shall be determined by the valuation of two able practical surveyors, one of whom shall be nominated by the promoters of the undertaking, and the other by the other party, and if such two surveyors cannot agree in the valuation, then by such third surveyor as any two justices shall upon application of either party, after notice to the other party, for that purpose nominate; and each of such two surveyors, if they agree, or if not then the surveyor nominated by the said justices, shall annex to the valuation a declaration in writing, subscribed by them or him, of the correctness thereof; and all such purchase-money or compensation shall be deposited in the bank for the benefit of the parties interested, in manner hereinafter (*o*) mentioned (*p*).

Amount of compensation in case of parties under disability to be ascertained by valuation, and paid into the bank.

10. It shall be lawful (*q*) for any person seised in fee of or entitled to dispose of absolutely for his own benefit any lands authorized to be purchased for the purposes of the special act to sell and convey such

Where vendor absolutely entitled, lands may be sold on chief rents.

(*m*) *Vide ante*, p. 47.

(*n*) S. 96.

(*o*) S. 69.

(*p*) *Vide ante*, p. 57.

(*q*) Ss. 10, 11, are extended by L. Cl. Act, 1860, ss. 2 and 3 (*infra*, p. 436), to persons under disability or incapacity.

lands or any part thereof unto the promoters of the undertaking, in consideration of an annual rent-charge payable by the promoters of the undertaking, [*but, except as aforesaid, the consideration to be paid for the purchase of any such lands, or for any damage done thereto, shall be in a gross sum (r)*].

Payment of
rents to be
charged on
tolls.

11. The yearly rents reserved by any such conveyance shall be charged on the tolls or rates, if any, payable under the special act, and shall be otherwise secured in such manner as shall be agreed between the parties, and shall be paid by the promoters of the undertaking as such rents become payable; and if at any time any such rents be not paid within thirty days after they so become payable, and after demand thereof in writing, the person to whom any such rent shall be payable may either recover the same from the promoters of the undertaking, with costs of suit, by action of debt in any of the superior courts, or it shall be lawful for him to levy the same by distress of the goods and chattels of the promoters of the undertaking (s).

Power to
purchase
lands required
for additional
accommo-
dation.

12. In case the promoters of the undertaking shall be empowered by the special act to purchase lands for extraordinary purposes, it shall be lawful for all parties who, under the provisions hereinbefore contained, would be enabled to sell and convey lands, to sell and convey the lands so authorized to be purchased for extraordinary purposes.

Authority to
sell and re-
purchase such
lands.

13. It shall be lawful for the promoters of the undertaking to sell the lands which they shall have so acquired for extraordinary purposes, or any part thereof, in such manner, and for such considerations, and to such persons as the promoters of the undertaking may think fit, and again to purchase other lands for the like purposes, and afterwards sell the same, and so from time to time; but the total quantity of land to be held at any one time by the promoters of the undertaking, for the purposes aforesaid, shall not exceed the prescribed quantity.

Restraint on
purchase from
incapacitated
persons.

14. The promoters of the undertaking shall not, by virtue of the power to purchase land for extraordinary purposes, purchase more than the prescribed quantity from any party under legal disability, or who would not be able to sell and convey such lands except under the powers of this and the special act; and if the promoters of the undertaking purchase the said quantity of land from any party under such legal disability, and afterwards sell the whole or any part of the land so purchased, it shall not be lawful for any party being under legal disability to sell to the promoters of the undertaking any other lands in lieu of the land so sold or disposed of by them.

Municipal
corporations
not to sell
without the
approbation
of the
Treasury.

15. Nothing in this or the special act contained shall enable any municipal corporation to sell for the purposes of the special act, without the approbation of [*the Commissioners of her Majesty's (t)*] Treasury (u) [*of the United Kingdom of Great Britain and Ireland,*

(r) Repealed by L. Cl. Act, 1860, s. 1; *vide infra*, p. 436.

(s) For method of levying distress, see ss. 138 *et seqq.*

(t) Repealed by S. L. R. Act, 1894, s. 1.

(u) Now the Ministry of Health.

or any three of them (x)], any lands which they could not have sold without such approbation before the passing of the special act, other than such lands as the company are by the powers of this or the special act empowered to purchase or take compulsorily.

(Purchase and taking of Lands otherwise than by Agreement.)

And with respect to the purchase and taking of lands otherwise than by agreement, be it enacted as follows:

16. Where the undertaking is intended to be carried into effect by means of a capital to be subscribed by the promoters of the undertaking, the whole of the capital or estimated sum for defraying the expenses of the undertaking shall be subscribed under contract binding the parties thereto, their heirs, executors, and administrators, for the payment of the several sums by them respectively subscribed, before it shall be lawful to put in force any of the powers of this or the special act, or any act incorporated therewith, in relation to the compulsory taking of land for the purposes of the undertaking.

Capital to be subscribed before compulsory powers of purchase put in force.

17. A certificate under the hands of two justices, certifying that the whole of the prescribed sum has been subscribed shall be sufficient evidence thereof, and on the application of the promoters of the undertaking, and the production of such evidence as such justices think proper and sufficient, such justices shall grant such certificate accordingly.

A certificate of two justices to be evidence that the capital has been subscribed.

18. When the promoters of the undertaking shall require to purchase or take any of the lands which by this or the special act, or any act incorporated therewith, they are authorized to purchase or take, they shall give notice thereof to all the parties interested in such lands, or to the parties enabled by this act to sell and convey or release the same, or such of the said parties as shall, after diligent inquiry, be known to the promoters of the undertaking, and by such notice shall demand from such parties the particulars of their estate and interest in such lands, and of the claims made by them in respect thereof; and every such notice shall state the particulars of the lands so required, and that the promoters of the undertaking are willing to treat for the purchase thereof, and as to the compensation to be made to all parties for the damage that may be sustained by them by reason of the execution of the works.

Notice of intention to take lands.

19. All notices required to be served by the promoters of the undertaking upon the parties interested in or entitled to sell any such lands shall either be served personally on such parties or left at their last usual place of abode, if any such can after diligent inquiry be found, and in case any such parties shall be absent from the United Kingdom, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

Service of notices on owners and occupiers of lands.

20. If any such party be a corporation aggregate, such notice shall be left at the principal office of business of such corporation, or, if no such office can after diligent inquiry be found, shall be served on

Service of notice on a corporation aggregate.

(x) Repealed by S. L. R. Act, 1894, s. 1.

some principal member, if any, of such corporation, and such notice shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

If parties fail to treat, or in case of dispute, question to be settled as after mentioned.

21. If, for twenty-one days after the service of such notice, any such party shall fail to state the particulars of his claim in respect of any such land, or to treat with the promoters of the undertaking in respect thereof, or if such party and the promoters of the undertaking shall not agree as to the amount of the compensation to be paid by the promoters of the undertaking for the interest in such lands belonging to such party, or which he is by this or the special act enabled to sell, or for any damage that may be sustained by him by reason of the execution of the works, the amount of such compensation shall be settled in the manner hereinafter provided for settling cases of disputed compensation.

(Justices.)

Disputes as to compensation where the amount claimed does not exceed 50*l.* to be settled by two justices.

22. If no agreement be come to between the promoters of the undertaking and the owners of or parties by this act enabled to sell and convey or release any lands taken or required for or injuriously affected by the execution of the undertaking, or any interest in such lands, as to the value of such lands or of any interest therein, or as to the compensation to be made in respect thereof, and if in any such case the compensation claimed shall not exceed fifty pounds, the same shall be settled by two justices (*y*).

Compensation exceeding 50*l.* to be settled by arbitration or jury, at the option of the party claiming compensation.

23 (*z*). If the compensation claimed or offered in any such case shall exceed fifty pounds, and if the party claiming compensation desire to have the same settled by arbitration, and signify such desire by notice in writing to the promoters of the undertaking, before they have issued their warrant to the sheriff to summon a jury in respect of such lands, under the provisions hereinafter contained, stating in such notice the nature of the interest in respect of which such party claims compensation, and the amount of the compensation so claimed, the same shall be so settled accordingly; but unless the party claiming compensation shall as aforesaid signify his desire to have the question of such compensation settled by arbitration, or if when the matter shall have been referred to arbitration the arbitrators or their umpire shall for three months have failed to make their or his award, or if no final award shall be made, the question of such compensation shall be settled by the verdict of a jury, as hereinafter provided.

Method of proceeding for settling disputes as to compensation by justices.

24. It shall be lawful for any justice, upon the application of either party with respect to any question of disputed compensation by this or the special act, or any act incorporated therewith, authorized to be settled by two justices, to summon the other party to appear before two justices, at a time and place to be named in the summons,

(*y*) *vide ante*, p. 177.

(*z*) Ss. 23, 25—37 are affected by the Arbitration Act, 1889 (52 & 53 Vict. c. 49), s. 24 (*post*, p. 472); *vide ante*, p. 185.

and upon the appearance of such parties, or, in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such justices to hear and determine such question, and for that purpose to examine such parties or any of them, and their witnesses, upon oath, and the costs of every such inquiry shall be in the discretion of such justices, and they shall settle the amount thereof.

(*Arbitration (a).*)

25. When any question of disputed compensation by this or the special act, or any act incorporated therewith, authorized or required to be settled by arbitration, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall nominate and appoint an arbitrator, to whom such dispute shall be referred; and every appointment of an arbitrator shall be made on the part of the promoters of the undertaking under the hands of the said promoters or any two of them, or of their secretary or clerk, and on the part of any other party under the hand of such party, or if such party be a corporation aggregate under the common seal of such corporation; and such appointment shall be delivered to the arbitrator, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other (*b*), nor shall the death of either party operate as a revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matter so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator; then upon such failure the party making the request and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties, and such arbitrator may proceed to hear and determine the matters which shall be in dispute, and in such case the award or determination of such single arbitrator shall be final (*c*).

Appointment of arbitrator when questions are to be determined by arbitration.

26. If, before the matters so referred shall be determined, any arbitrator appointed by either party die, or become incapable, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place, and if, for the space of seven days after notice in writing from the other party for that purpose, he fail to do so (*d*), the remaining or other arbitrator may proceed *ex parte*, and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were

Vacancy of arbitrator to be supplied.

(*a*) *Vide ante*, p. 185.

(*b*) See Arbitration Act, 1889 (52 & 53 Vict. c. 49), ss. 1, 2 (*post*, p. 472): *vide ante*, p. 190.

(*c*) See Arbitration Act, 1889, s. 6 (*b*); *ante*, p. 191.

(*d*) See Arbitration Act, 1889, s. 5 (*b*); *ante*, p. 191.

vested in the former arbitrator at the time of such his death or disability as aforesaid.

Appointment of umpire.

27. Where more than one arbitrator shall have been appointed, such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint, by writing under their hands, an umpire to decide on any such matters on which they shall differ, or which shall be referred to him under the provisions of this or the special act, and if such umpire shall die, or become incapable to act, they shall forthwith, after such death or incapacity, appoint another umpire in his place, and the decision of every such umpire on the matters so referred to him shall be final.

Board of trade empowered to appoint an umpire on neglect of the arbitrators, in case of railway companies.

28. If in either of the cases aforesaid the said arbitrators shall refuse, or shall, for seven days after request of either party to such arbitration, neglect to appoint an umpire, the board of trade, [in any case in which a railway company shall be one party to the arbitration, and two justices in any other case,] (e) shall, on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special act, shall be final.

In case of death of single arbitrator the matter to begin *de novo*.

29. If, when a single arbitrator shall have been appointed, such arbitrator shall die or become incapable to act before he shall have made his award, the matters referred to him shall be determined by arbitration under the provisions of this or the special act in the same manner as if such arbitrator had not been appointed.

If either arbitrator refuse to act the other to proceed *ex parte*.

30. If, where more than one arbitrator shall have been appointed, either of the arbitrators refuse or for seven days neglect to act, the other arbitrator may proceed *ex parte*, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

If arbitrators fail to make their award within twenty-one days the matter to go to the umpire.

31. If, where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time (if any) as shall have been appointed for that purpose by both such arbitrators under their hands, the matters referred to them shall be determined by the umpire to be appointed as aforesaid.

Power of arbitrators to call for books, &c.

32. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute (f), and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose (g).

Arbitrator or umpire to make a declaration.

33. Before any arbitrator or umpire shall enter into the considera-

(e) Repealed by L. Cl. (Umpire) Act, 1883, s. 1 (*post*, p. 439), *vide ante*, p. 192.

(f) See Arbitration Act, 1889, Sched. I. (f); *post*, p. 477.

(g) See Arbitration Act, 1889, s. 7 (a), Sched. I. (g); *ante*, p. 193.

tion of any matters referred to him, he shall, in the presence of a justice, make and subscribe the following declaration; that is to say,

"I, A. B., do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the provisions of the act [*naming the special act*]. A.B.

"Made and subscribed in the presence of

And such declaration shall be annexed to the award when made; and if any arbitrator or umpire having made such declaration shall wilfully act contrary thereto he shall be guilty of a misdemeanor.

34. All the costs (*h*) of any such arbitration, and incident thereto, to be settled by the arbitrators, shall be borne by the promoters of the undertaking, unless the arbitrators shall award the same, or a less sum than shall have been offered by the promoters of the undertaking, in which case each party shall bear his own costs incident to the arbitration, and the costs of the arbitrators shall be borne by the parties in equal proportions (*i*). Costs of arbitration, how to be borne.

35. The arbitrators shall deliver their award in writing to the promoters of the undertaking, and the said promoters shall retain the same, and shall forthwith, on demand, at their own expense, furnish a copy thereof to the other party to the arbitration, and shall at all times, on demand, produce the said award, and allow the same to be inspected or examined by such party or any person appointed by him for that purpose. Award to be delivered to the promoters of the undertaking.

36. The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties (*k*). Submission may be made a rule of court.

37. No award made with respect to any question referred to arbitration under the provisions of this or the special act shall be set aside for irregularity or error in matter of form (*l*). Award not void through error in form.

(*Jury (m).*)

38. Before the promoters of the undertaking shall issue their warrant for summoning a jury for settling any case of disputed compensation, they shall give not less than ten days' notice to the other party of their intention to cause such jury to be summoned, and in such notice the promoters of the undertaking shall state what sum of money they are willing to give for the interest in such lands sought to be purchased by them from such party, and for the damage to be sustained by him by the execution of the works. Promoters of the undertaking to give notice before summoning a jury.

39. In every case in which any such question of disputed compensation shall be required to be determined by the verdict of a jury, the promoters of the undertaking shall issue their warrant to the sheriff requiring him to summon a jury for that purpose, and such warrant shall be under the common seal of the promoters of the Warrant for summoning jury to be addressed to the sheriff.

(*h*) As to taxation, *vide ante*, p. 202.

(*i*) See Arbitration Act, 1889, Sched. I. (*i*); *ante*, p. 200.

(*k*) Superseded by Arbitration Act, 1889, s. 1; *ante*, p. 191, *post*, p. 472.

(*l*) Cf. Arbitration Act, 1889, s. 7 (*c*); *post*, p. 473.

(*m*) *Vide ante*, Ch. XII., p. 205.

undertaking, if they be a corporation, or if they be not a corporation under the hands and seals of such promoters or any two of them; and if such sheriff be interested in the matter in dispute, such application shall be made to some coroner of the county in which the lands in question, or some part thereof, shall be situate, and if all the coroners of such county be so interested such application may be made to some person having filled the office of sheriff or coroner in such county, and who shall be then living there, and who shall not be interested in the matter in dispute; and with respect to the persons last mentioned, preference shall be given to one who shall have most recently served either of the said offices; and every ex-sheriff, coroner, or ex-corer, shall have power, if he think fit, to appoint a deputy or assessor.

Provisions applicable to sheriff to apply to coroner.

40. Throughout the enactments contained in this act relating to the reference to a jury, where the term "sheriff" is used, the provisions applicable thereto shall be held to apply to every coroner or other person lawfully acting in his place; and in every case in which any such warrant shall have been directed to any other person than the sheriff, such sheriff shall, immediately on receiving notice of the delivery of the warrant, deliver over, on application for that purpose, to the person to whom the same shall have been directed, or to any person appointed by him to receive the same, the jurors book and special jurors list belonging to the county where the lands in question shall be situate.

Jury to be summoned.

41. Upon the receipt of such warrant the sheriff shall summon a jury of twenty-four indifferent persons, duly qualified to act as common jurymen in the superior courts, to meet at a convenient time and place to be appointed by him for that purpose, such time not being less than fourteen nor more than twenty-one days after the receipt of such warrant, and such place not being more than eight miles distant from the lands in question, unless by consent of the parties interested, and he shall forthwith give notice to the promoters of the works of the time and place so appointed by him.

Jury to be impanelled.

42. Out of the jurors appearing upon such summons a jury of twelve persons shall be drawn by the sheriff, in such manner as juries for trials of issues joined in the superior courts are by law required to be drawn, and if a sufficient number of jurymen do not appear in obedience to such summons the sheriff shall return other indifferent men, duly qualified as aforesaid, of the bystanders, or others that can speedily be procured, to make up the jury to the number aforesaid; and all parties concerned may have their lawful challenges against any of the jurymen, but no such party shall challenge the array.

Sheriff to preside.

43. The sheriff shall preside on the said inquiry, and the party claiming compensation shall be deemed the plaintiff, and shall have all such rights and privileges as the plaintiff is entitled to in the trial of actions at law; and, if either party so request in writing, the sheriff shall summon before him any person considered necessary to be examined as a witness touching the matters in question, and on the like request the sheriff shall order the jury, or any six or more of

them, to view the place or matter in controversy, in like manner as views may be had in the trial of actions in the superior courts. View by jury.

44. If the sheriff make default in any of the matters hereinbefore required to be done by him in relation to any such trial or inquiry he shall forfeit fifty pounds for every such offence, and such penalty shall be recoverable by the promoters of the undertaking by action in any of the superior courts; and if any person summoned and returned upon any jury under this or the special act, whether common or special, do not appear, or if appearing he refuse to make oath, or in any other manner unlawfully neglect his duty, he shall, unless he show reasonable excuse to the satisfaction of the sheriff, forfeit a sum not exceeding ten pounds; and every such penalty payable by a sheriff or jurymen shall be applied in satisfaction of the costs of the inquiry, so far as the same will extend; and, in addition to the penalty hereby imposed, every such jurymen shall be subject to the same regulations, pains and penalties as if such jury had been returned for the trial of an issue joined in any of the superior courts. Penalty on sheriff and jurors for default.

45. If any person duly summoned to give evidence upon any such inquiry, and to whom a tender of his reasonable expenses shall have been made, fail to appear at the time and place specified in the summons, without sufficient cause, or if any person, whether summoned or not, who shall appear as a witness, refuse to be examined on oath touching the subject-matter in question, every person so offending shall forfeit to the party aggrieved a sum not exceeding ten pounds. Penalty on witnesses making default.

46. Not less than ten days' notice of the time and place of the inquiry shall be given in writing by the promoters of the undertaking to the other party. Notice of inquiry.

47. If the party claiming compensation shall not appear at the time appointed for the inquiry, such inquiry shall not be further proceeded in, but the compensation to be paid shall be such as shall be ascertained by a surveyor appointed by two justices in manner hereinafter provided. If the party claiming make default the inquiry not to proceed.

48. Before the jury proceed to inquire of and assess the compensation or damage in respect of which their verdict is to be given, they shall make oath that they will truly and faithfully inquire of and assess such compensation or damage, and the sheriff shall administer such oaths, as well as the oaths of all persons called upon to give evidence. Jury to be sworn.

49. Where such inquiry shall relate to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to the lands held therewith, the jury shall deliver their verdict separately for the sum of money to be paid for the purchase of the lands required for the works or of any interest therein belonging to the party with whom the question of disputed compensation shall have arisen, or which under the provisions herein contained, he is enabled to sell or convey, and for the sum of money to be paid by way of compensation for the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or otherwise injuriously affecting such Sums to be paid for purchase of lands and for damage to be assessed separately.

lands by the exercise of the powers of this or the special act, or any act incorporated therewith.

Verdict and judgment to be recorded.

50. The sheriff before whom such inquiry shall be held shall give judgment for the purchase-money or compensation assessed by such jury, and the verdict and judgment shall be signed by the sheriff, and being so signed shall be kept by the clerk of the peace among the records of the general or quarter sessions of the county in which the lands or any part thereof shall be situate in respect of which such purchase-money or compensation shall have been awarded; and such verdicts and judgments shall be deemed records, and the same or true copies thereof shall be good evidence in all courts and elsewhere, and all persons may inspect the said verdicts and judgments, and may have copies thereof or extracts therefrom, on paying for each inspection thereof one shilling, and for every one hundred words copied or extracted therefrom sixpence, which copies or extracts the clerk of the peace is hereby required to make out, and to sign and certify the same to be true copies.

Costs of the inquiry, how to be borne.

51. On every such inquiry before a jury, where the verdict of the jury shall be given for a greater sum than the sum previously offered by the promoters of the undertaking, all the costs of such inquiry shall be borne by the promoters of the undertaking; but if the verdict of the jury be given for the same or a less sum than the sum previously offered by the promoters of the undertaking, or if the owner of the land shall have failed to appear at the time and place appointed for the inquiry, having received due notice thereof, one-half of the costs of summoning, impanelling, and returning the jury, and of taking the inquiry, and recording the verdict and judgment thereon, in case such verdict shall be taken, shall be defrayed by the owner of the lands, and the other half by the promoters of the undertaking, and each party shall bear his own costs, other than as aforesaid, incident to such inquiry.

Particulars of the costs.

52. The costs of any such inquiry shall, in case of difference, be settled by one of the masters of the Court of Queen's Bench of England or Ireland, according as the lands are situate, on the application of either party, and such costs shall include all reasonable costs, charges, and expenses incurred in summoning, impanelling, and returning the jury, taking the inquiry, the attendance of witnesses, the employment of counsel and attorneys, recording the verdict and judgment thereon, and otherwise incident to such inquiry (n).

Payment of costs.

53. If any such costs shall be payable by the promoters of the undertaking, and if within seven days after demand such costs be not paid to the party entitled to receive the same, they shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly; and if any such costs shall be payable by the owner of the lands or of any interest therein, the same may be deducted and retained by the promoters of the undertaking out of any money awarded by the jury to such owner or determined by the valuation of a surveyor under the provision hereinafter contained; and the pay-

(n) Cf. L. Cl. (Taxation of Costs) Act, 1895, s. 1 (*post*, p. 440). *Vide ante*, p. 217.

ment or deposit of the remainder, if any, of such money, shall be deemed payment and satisfaction of the whole thereof, or if such costs shall exceed the amount of the money so awarded or determined, the excess shall be recoverable by distress, and on application to any justice he shall issue his warrant accordingly.

54. If either party desire any such question of disputed compensation as aforesaid to be tried before a special jury, such question shall be so tried, provided that notice of such desire, if coming from the other party, be given to the promoters of the undertaking before they have issued their warrant to the sheriff; and for that purpose the promoters of the undertaking shall by their warrant to the sheriff require him to nominate a special jury for such trial; and thereupon the sheriff shall, as soon as conveniently may be after the receipt by him of such warrant, summon both the parties to appear before him, by themselves or their attorneys, at some convenient time and place appointed by him for the purpose of nominating a special jury (not being less than five nor more than eight days from the service of such summons); and at the place and time so appointed the sheriff shall proceed to nominate and strike a special jury, in the manner in which such juries shall be required by the laws for the time being in force, to be nominated or struck by the proper officers of the superior courts, and the sheriff shall appoint a day, not later than the eighth day after striking of such jury, for the parties or their agents to appear before him to reduce the number of such jury, and thereof shall give four days' notice to the parties; and on the day so appointed the sheriff shall proceed to reduce the said special jury to the number of twenty, in the manner used and accustomed by the proper officers of the superior courts.

Special jury to be summoned at the request of either party.

55. The special jury on such inquiry shall consist of twelve of the said twenty who shall first appear on the names being called over, the parties having their lawful challenges against any of the said jurymen; and if a full jury do not appear, or if after such challenges a full jury do not remain, then, upon the application of either party, the sheriff shall add to the list of such jury the names of any other disinterested persons qualified to act as special or common jurymen, who shall not have been previously struck off the aforesaid list, and who may then be attending the court or can speedily be procured, so as to complete such jury, all parties having their lawful challenges against such persons; and the sheriff shall proceed to the trial and adjudication of the matters in question by such jury, and such trial shall be attended in all respects with the like incidents and consequences, and the like penalties shall be applicable, as hereinbefore provided in the case of a trial by common jury.

Deficiency of special jurymen.

56. Any other inquiry than that for the trial of which such special jury may have been struck and reduced as aforesaid may be tried by such jury, provided the parties thereto respectively shall give their consent to such trial.

Other inquiries before same special jury by consent.

57. No jurymen shall, without his consent, be summoned or required to attend any such proceeding as aforesaid more than once in any year.

Jurymen not to attend more than once a year.

(Compensation to Absent Owners (o).)

Compensation to absent parties to be determined by a surveyor appointed by two justices.

58. The purchase-money or compensation to be paid for any lands to be purchased or taken by the promoters of the undertaking from any party who, by reason of absence from the kingdom, is prevented from treating, or who cannot, after diligent inquiry, be found, or who shall not appear at the time appointed for the inquiry before the jury as hereinbefore provided for, after due notice thereof, and the compensation to be paid for any permanent injury to such lands, shall be such as shall be determined by the valuation of such able practical surveyor as two justices shall nominate for that purpose as herein-after mentioned (*p*).

Two justices to nominate a surveyor.

59. Upon application by the promoters of the undertaking to two justices, and upon such proof as shall be satisfactory to them, that any such party is, by reason of absence from the kingdom, prevented from treating, or cannot after diligent inquiry be found, or that any such party failed to appear on such inquiry before a jury as aforesaid, after due notice to him for that purpose, such justices shall, by writing under their hands, nominate an able practical surveyor for determining such compensation as aforesaid, and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

Declaration to be made by the surveyor.

60. Before such surveyor shall enter upon the duty of making such valuation as aforesaid he shall, in the presence of such justices, or one of them, make and subscribe the declaration following at the foot of such nomination: (that is to say,)

"I, A. B., do solemnly and sincerely declare, that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me. A. B.

"Made and subscribed in the presence of

And if any surveyor shall corruptly make such declaration, or having made such declaration, shall wilfully act contrary thereto, he shall be guilty of a misdemeanor.

Valuation, &c. to be produced to the owner of the lands on demand.

61. The said nomination and declaration shall be annexed to the valuation to be made by such surveyor, and shall be preserved together therewith by the promoters of the undertaking, and they shall at all times produce the said valuation and other documents, on demand, to the owner of the lands comprised in such valuation, and to all other parties interested therein.

Expenses to be borne by promoters.

62. All the expenses of and incident to every such valuation shall be borne by the promoters of the undertaking.

Purchase-money and compensation, how to be estimated.

63. In estimating the purchase-money or compensation to be paid by the promoters of the undertaking, in any of the cases aforesaid, regard shall be had by the justices, arbitrators or surveyors, as the case may be, not only to the value of the land to be purchased, or taken by the promoters of the undertaking, but also to the damage, if any, to be sustained by the owner of the lands by reason of the severing of the lands taken from the other lands of such owner, or

otherwise injuriously affecting such other lands by the exercise of the powers of this or the special act, or any act incorporated therewith.

64. When the compensation payable in respect of any lands, or any interest therein, shall have been ascertained by the valuation of a surveyor, and deposited in the bank under the provisions herein contained, by reason that the owner of or party entitled to convey such lands, or such interest therein as aforesaid, could not be found, or was absent from the kingdom, if such owner or party shall be dissatisfied with such valuation it shall be lawful for him, before he shall have applied to the Court of Chancery for payment or investment of the moneys so deposited under the provisions herein contained, by notice in writing to the promoters of the undertaking, to require the question of such compensation to be submitted to arbitration, and thereupon the same shall be so submitted accordingly, in the same manner as in other cases of disputed compensation hereinbefore authorized or required to be submitted to arbitration.

Where compensation to absent party has been determined by a surveyor, the party may have the same submitted to arbitration.

65. The question to be submitted to the arbitrators in the case last aforesaid shall be, whether the said sum so deposited as aforesaid by the promoters of the undertaking was a sufficient sum, or whether any and what further sum ought to be paid or deposited by them.

Question to be submitted to the arbitrators.

66. If the arbitrators shall award that a further sum ought to be paid or deposited by the promoters of the undertaking, they shall pay or deposit, as the case may require, such further sum within fourteen days after the making of such award, or in default thereof the same may be enforced by attachment, or recovered with costs, by action or suit in any of the superior courts.

If further sum awarded, promoters to pay or deposit same within 14 days.

67. If the arbitrators shall determine that the sum so deposited was sufficient, the costs of and incident to such arbitration to be determined by the arbitrators shall be in the discretion of the arbitrators, but if the arbitrators shall determine that a further sum ought to be paid or deposited by the promoters of the undertaking, all the costs of and incident to the arbitration shall be borne by the promoters of the undertaking.

Costs of the arbitration.

(Compensation for Lands taken or Injuriouslly Affected, &c.)

68. If any party shall be entitled to any compensation in respect of any lands, or of any interest therein, which shall have been taken for or injuriously affected by the execution of the works, and for which the promoters of the undertaking shall not have made satisfaction under the provisions of this or the special act, or any act incorporated therewith, and if the compensation claimed in such case shall exceed the sum of fifty pounds such party may have the same settled either by arbitration or by the verdict of a jury, as he shall think fit; and if such party desire to have the same settled by arbitration, it shall be lawful for him to give notice in writing to the promoters of the undertaking of such his desire, stating in such notice the nature of the interest in such lands in respect of which he claims compensation, and the amount of the compensation so claimed therein; and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and shall

To be settled by arbitration or jury, at the option of the party claiming compensation.

enter into a written agreement for that purpose within twenty-one days after the receipt of any such notice from any party so entitled, the same shall be settled by arbitration in the manner herein provided; or if the party so entitled as aforesaid desire to have such question of compensation settled by jury, it shall be lawful for him to give notice in writing of such his desire to the promoters of the undertaking, stating such particulars as aforesaid, and unless the promoters of the undertaking be willing to pay the amount of compensation so claimed, and enter into a written agreement for that purpose, they shall, within twenty-one days after the receipt of such notice, issue their warrant to the sheriff to summon a jury for settling the same in the manner herein provided, and in default thereof they shall be liable to pay to the party so entitled as aforesaid the amount of compensation so claimed, and the same may be recovered by him, with costs, by action in any of the superior courts.

(Payment to Persons having Limited Interests or under Disability, or whose Title is Defective (q).)

And with respect to the purchase-money or compensation coming to parties having limited interests, or prevented from treating, or not making title, be it enacted as follows:

Purchase-money payable to parties under disability amounting to 200*l.* to be deposited in the bank.

69. If the purchase-money or compensation which shall be payable in respect of any lands, or any interest therein, purchased or taken by the promoters of the undertaking from any corporation, tenant for life or in tail, married woman seised in her own right or entitled to dower, guardian, committee of lunatic or idiot, trustee, executor, or administrator, or person having a partial or qualified interest only in such lands, and not entitled to sell or convey the same except under the provisions of this or the special act, or the compensation to be paid for any permanent damage to any such lands amount to or exceed the sum of two hundred pounds, the same shall be paid into the bank, in the name and with the privity of the accountant-general of the Court of Chancery^(r) [*in England if the same relate to lands in England or Wales, or the accountant-general of the Court of Exchequer in Ireland if the same relate to lands in Ireland*]^(s), to be placed to the account there of such accountant-general, *ex parte* the promoters of the undertaking (describing them by their proper name), in the matter of the special act (citing it), pursuant to the method prescribed by any act for the time being in force for regulating moneys paid into the said courts; and such moneys shall remain so deposited until the same be applied to some one or more of the following purposes (that is to say):

Application of moneys deposited.

In the purchase or redemption of the land tax, or the discharge of any debt or incumbrance affecting the land in respect of which

(q) *Vide ante*, p. 248.

(r) The paymaster-general is substituted for the accountant-general by the Court of Chancery (Funds) Act, 1872 (35 & 36 Vict. c. 44), s. 6.

(s) Repealed by S. L. R. Act, 1892.

such money shall have been paid, or affecting other lands settled therewith to the same or the like uses, trusts, or purposes; or In the purchase of other lands to be conveyed, limited, and settled upon the like uses, trusts, and purposes, and in the same manner as the lands in respect of which such money shall have been paid stood settled; or

If such money shall be paid in respect of any buildings taken under the authority of this or the special act, or injured by the proximity of the works, in removing or replacing such buildings, or substituting others in their stead, in such manner as the Court of Chancery shall direct; or

In payment to any party becoming absolutely entitled to such money.

70. Such money may be so applied as aforesaid upon an order of the Court of Chancery [*in England, or the Court of Exchequer in Ireland*] (*t*), made on the petition of the party who would have been entitled to the rents and profits of the lands in respect of which such money shall have been deposited; and until the money can be so applied it may, upon the like order, be invested by the said accountant-general in the purchase of three per centum consolidated or three per centum reduced bank annuities, or in government or real securities, and the interest, dividends and annual proceeds thereof paid to the party who would for the time being have been entitled to the rents and profits of the lands.

Order for application and investment meanwhile.

71. If such purchase-money or compensation shall not amount to the sum of two hundred pounds, and shall exceed the sum of twenty pounds, the same shall either be paid into the bank, and applied in the manner hereinbefore directed with respect to sums amounting to or exceeding two hundred pounds, or the same may lawfully be paid to two trustees to be nominated by the parties entitled to the rents or profits of the lands in respect whereof the same shall be payable, such nomination to be signified by writing under the hands of the party so entitled; and in case of the coverture, infancy, lunacy, or other incapacity of the parties entitled to such moneys, such nomination may lawfully be made by their respective husbands, guardians, committees, or trustees; but such last-mentioned application of the moneys shall not be made unless the promoters of the undertaking approve thereof and of the trustees named for the purpose; and the money so paid to such trustees, and the produce arising therefrom, shall be by such trustees applied in the manner hereinbefore directed with respect to money paid into the bank, but it shall not be necessary to obtain any order of the court for that purpose.

Sums from 20*l.* to 200*l.* to be deposited or paid to trustees.

72. If such money shall not exceed the sum of twenty pounds, the same shall be paid to the parties entitled to the rents and profits of the lands in respect whereof the same shall be payable, for their own use and benefit, or in case of the coverture (*u*), infancy, idiocy, lunacy, or other incapacity of any such parties, then such money shall

Sums not exceeding 20*l.* to be paid to parties.

(*t*) Repealed by S. L. R. Act, 1892.

(*u*) See Married Women's Property Act, 1882, ss. 1 (1), 2, 19.

be paid, for their use, to the respective husbands, guardians, committees, or trustees of such persons.

All sums payable under contract with persons not absolutely entitled, to be paid into bank.

73. All sums of money exceeding twenty pounds, which may be payable by the promoters of the undertaking in respect of the taking, using, or interfering with any lands under a contract or agreement with any person who shall not be entitled to dispose of such lands, or of the interest therein contracted to be sold by him absolutely for his own benefit, shall be paid into the bank or to trustees in manner aforesaid; and it shall not be lawful for any contracting party not entitled as aforesaid to retain to his own use any portion of the sums so agreed or contracted to be paid for or in respect of the taking, using, or interfering with any such lands, or in lieu of bridges, tunnels, or other accommodation works, or for assenting to or not opposing the passing of the bill authorizing the taking of such lands, but all such moneys shall be deemed to have been contracted to be paid for and on account of the several parties interested in such lands, as well in possession as in remainder, reversion, or expectancy: provided always, that it shall be in the discretion of the Court of Chancery [*in England, or the Court of Exchequer in Ireland*] (x), or the said trustees, as the case may be, to allot to any tenant for life, or for any other partial or qualified estate, for his own use, a portion of the sum so paid into the bank, or to such trustees as aforesaid, as compensation for any injury, inconvenience, or annoyance which he may be considered to sustain, independently of the actual value of the lands to be taken, and of the damage occasioned to the lands held therewith, by reason of the taking of such lands and the making of the works.

Court of Chancery may direct application of money in respect of leases or reversions as they may think just.

74. Where any purchase-money or compensation paid into the bank under the provisions of this or the special act shall have been paid in respect of any lease for a life or lives or years, or for a life or lives and years, or any estate in lands less than the whole fee simple thereof, or of any reversion dependent on any such lease or estate, it shall be lawful for the Court of Chancery [*in England, or the Court of Exchequer in Ireland*] (x), on the petition of any party interested in such money, to order that the same shall be laid out, invested, accumulated, and paid in such manner as the said court may consider will give to the parties interested in such money the same benefit therefrom as they might lawfully have had from the lease, estate, or reversion in respect of which such money shall have been paid, or as near thereto as may be.

Upon deposit being made, the owners of the lands to convey, or in default the lands to vest in the promoters of the

75. Upon deposit in the bank in manner hereinbefore provided of the purchase-money or compensation agreed or awarded to be paid in respect of any lands purchased or taken by the promoters of the undertaking under the provisions of this or the special act, or any act incorporated therewith, the owner of such lands, including in such term all parties by this act enabled to sell or convey lands, shall, when required so to do by the promoters of the undertaking,

(x) Repealed by S. L. R. Act, 1892. See as to Ireland, Supreme Court of Judicature Act (Ireland), 1877.

duly convey such lands to the promoters of the undertaking, or as they shall direct; and in default thereof, or if he fail to adduce a good title to such lands to their satisfaction, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation under the hands and seals of the promoters, or any two of them, containing a description of the lands in respect of which such default shall be made, and reciting the purchase or taking thereof by the promoters of the undertaking, and the names of the parties from whom the same were purchased or taken, and the deposit made in respect thereof, and declaring the fact of such default having been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of or capable of being sold and conveyed by the party between whom and the promoters of the undertaking such agreement shall have been come to, or as between whom and the promoters of the undertaking such purchase-money or compensation shall have been determined by a jury, or by arbitrators or by a surveyor appointed by two justices as herein provided, and shall have been deposited as aforesaid, shall vest absolutely in the promoters of the undertaking, and as against such parties, and all parties on behalf of whom they are hereinbefore enabled to sell and convey, the promoters of the undertaking shall be entitled to immediate possession of such lands.

undertaking
upon a deed
poll being
executed.

76. If the owner of any such lands purchased or taken by the promoters of the undertaking, or of any interest therein, on tender of the purchase-money or compensation either agreed or awarded to be paid in respect thereof, refuse to accept the same, or neglect or fail to make out a title to such lands, or to the interest therein claimed by him, to the satisfaction of the promoters of the undertaking, or if he refuse to convey or release such lands as directed by the promoters of the undertaking, or if any such owner be absent from the kingdom, or cannot after diligent inquiry be found, or fail to appear on the inquiry before a jury, as herein provided for, it shall be lawful for the promoters of the undertaking to deposit the purchase-money or compensation payable in respect of such lands, or any interest therein, in the bank, in the name and with the privity of the accountant-general of the Court of Chancery (*y*) [*in England or the Court of Exchequer in Ireland*] (*z*), to be placed, except in the cases herein otherwise provided for, to his account there, to the credit of the parties interested in such lands (describing them so far as the promoters of the undertaking can do), subject to the control and disposition of the said court.

Where parties
refuse to
convey, or do
not show title,
or cannot be
found, the
purchase-
money to be
deposited.

77. Upon any such deposit of money as last aforesaid being made, the cashier of the bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a

Upon deposit
being made a
receipt to be
given, and the

(*y*) Now the paymaster-general (Court of Chancery (Funds) Act, 1872, s. 6).

(*z*) Repealed by S. L. R. Act, 1892. See as to Ireland, Supreme Court of Judicature Act (Ireland), 1877.

lands to vest upon a deed poll being executed.

receipt for such money, specifying therein for what and for whose use (described as aforesaid) the same shall have been received, and in respect of what purchase the same shall have been paid in; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll under their common seal if they be a corporation, or if they be not a corporation, under the hands and seals of the said promoters or any two of them, containing a description of the lands in respect whereof such deposit shall have been made, and declaring the circumstances under which and the names of the parties to whose credit such deposit shall have been made, and such deed poll shall be stamped with the stamp duty which would have been payable upon a conveyance to the promoters of the undertaking of the lands described therein; and thereupon all the estate and interest in such lands of the parties for whose use and in respect whereof such purchase-money or compensation shall have been deposited shall vest absolutely in the promoters of the undertaking, and as against such parties they shall be entitled to immediate possession of such lands.

Application of moneys so deposited.

78. Upon the application by petition of any party making claim to the money so deposited as last aforesaid, or any part thereof, or to the lands in respect whereof the same shall have been so deposited, or any part of such lands, or any interest in the same, the said Court of Chancery [*in England or the Court of Exchequer in Ireland*] (z), may, in a summary way, as to such court shall seem fit, order such money to be laid out or invested in the public funds, or may order distribution thereof, or payment of the dividends thereof, according to the respective estates, titles or interests of the parties making claim to such money or lands, or any part thereof, and may make such other order in the premises as to such court shall seem fit.

Party in possession to be deemed the owner.

79. If any question arise respecting the title to the lands in respect whereof such moneys shall have been so paid or deposited as aforesaid, the parties respectively in possession of such lands, as being the owners thereof, or in receipt of the rents of such lands, as being entitled thereto at the time of such lands being purchased or taken, shall be deemed to have been lawfully entitled to such lands, until the contrary be shown to the satisfaction of the court; and unless the contrary be shown as aforesaid, the parties so in possession, and all parties claiming under them or consistently with their possession, shall be deemed entitled to the money so deposited, and to the dividends or interest of the annuities or securities purchased therewith, and the same shall be paid and applied accordingly.

Costs in cases of money deposited.

80. In all cases of moneys deposited in the bank under the provisions of this or the special act, or any act incorporated therewith, except where such moneys shall have been so deposited by reason of the wilful refusal of any party entitled thereto, to receive the same, or to convey or release the lands in respect whereof the same shall be payable, or by reason of the wilful neglect of any party to make out a good title to the land required, it shall be lawful for the Court

(z) Repealed by S. L. R. Act, 1892. See as to Ireland, Supreme Court of Judicature Act (Ireland), 1877.

of Chancery [*in England or the Court of Exchequer in Ireland*] (a), to order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the promoters of the undertaking, (that is to say,) the costs of the purchase or taking of the lands, or which shall have been incurred in consequence thereof, other than such costs as are herein otherwise provided for, and the costs of the investment of such moneys in government or real securities, and of the re-investment thereof in the purchase of other lands, and also the costs of obtaining the proper orders for any of the purposes aforesaid, and of the orders for the payment of the dividend and interest of the securities upon which such moneys shall be invested, and for the payment out of court of the principal of such moneys, or of the securities whereon the same shall be invested, and of all proceedings relating thereto, except such as are occasioned by litigation between adverse claimants: provided always, that the costs of one application only for re-investment in land shall be allowed, unless it shall appear to the Court of Chancery [*in England or the Court of Exchequer in Ireland*] (a), that it is for the benefit of the parties interested in the said moneys that the same should be invested in the purchase of lands, in different sums and at different times, in which case it shall be lawful for the court, if it think fit, to order the costs of any such investments to be paid by the promoters of the undertaking (b).

(*Conveyances of Lands* (c).)

And with respect to the conveyances of lands, be it enacted as follows:

81. Conveyances of lands to be purchased under the provisions of this or the special act, or any act incorporated therewith, may be according to the forms in the schedules (A) and (B) respectively to this act annexed or as near thereto as the circumstances of the case will admit, or by deed in any other form which the promoters of the undertaking may think fit; and all conveyances made according to the forms in the said schedules or as near thereto as the circumstances of the case will admit, shall be effectual to vest the lands thereby conveyed in the promoters of the undertaking, and shall operate to merge all terms of years attendant by express declaration, or by construction of law, on the estate or interest so thereby conveyed, and to bar and to destroy all such estates tail, and all other estates, rights, titles, remainders, reversions, limitations, trusts, and interests whatsoever, of and in the lands comprised in such conveyances which shall have been purchased or compensated for by the consideration therein mentioned; but although terms of years be thereby merged, they shall in equity afford the same protection as if they had been kept on foot, and assigned to a trustee for the promoters of the undertaking to attend the reversion and inheritance.

(a) Repealed by S. L. R. Act, 1892.

(b) *Vide ante*, p. 274.

(c) *Vide ante*, p. 244.

Costs of conveyances.

82. The costs of all such conveyances shall be borne by the promoters of the undertaking, and such costs shall include all charges and expenses incurred, on the part as well of the seller as of the purchaser, of all conveyances and assurances of any such lands, and of any outstanding terms or interests therein, and of deducing, evidencing, and verifying the title to such lands, terms, or interests, and of making out and furnishing such abstracts and attested copies as the promoters of the undertaking may require, and all other reasonable expenses incident to the investigation, deduction, and verification of such title.

Taxation of costs of conveyances.

83. If the promoters of the undertaking and the party entitled to any such costs shall not agree as to the amount thereof, such costs shall be taxed by one of the taxing masters of the Court of Chancery [or by a Master in Chancery in Ireland] (d), upon an order of the same court, to be obtained upon petition in a summary way by either of the parties; and the promoters of the undertaking shall pay what the said master shall certify to be due in respect of such costs to the party entitled thereto, or in default thereof the same may be recovered in the same way as any other costs payable under an order of the said court, or the same may be recovered by distress in the manner hereinbefore provided in other cases of costs; and the expense of taxing such costs shall be borne by the promoters of the undertaking, unless upon such taxation one sixth part of the amount of such costs shall be disallowed, in which case the costs of such taxation shall be borne by the party whose costs shall be so taxed, and the amount thereof shall be ascertained by the said master, and deducted by him accordingly in his certificate of such taxation.

(Entry upon Lands (e).)

And with respect to the entry upon lands by the promoters of the undertaking, be it enacted as follows:

Payment of price to be made previous to entry, except to survey, &c.

84. The promoters of the undertaking shall not, except by consent of the owners and occupiers, enter upon any lands which shall be required to be purchased or permanently used for the purposes and under the powers of this or the special act, until they shall either have paid to every party having any interest in such lands or deposited in the bank, in the manner herein mentioned, the purchase-money or compensation agreed or awarded to be paid to such parties respectively for their respective interests therein: provided always, that for the purpose merely of surveying and taking levels of such lands, and of probing or boring to ascertain the nature of the soil, and of setting out the line of the works, it shall be lawful for the promoters of the undertaking, after giving not less than three nor more than fourteen days' notice to the owners or occupiers thereof, to enter upon such lands without previous consent, making compensation for any damage thereby occasioned to the owners or occupiers thereof.

(d) Repealed by S. L. R. Act, 1892.

(e) *Vide ante*, p. 89.

85. Provided also, that if the promoters of the undertaking shall be desirous of entering upon and using any such lands before an agreement shall have been come to or an award made, or verdict given for the purchase-money or compensation to be paid by them in respect of such lands, it shall be lawful for the promoters of the undertaking to deposit in the bank by way of security, as hereinafter mentioned, either the amount of purchase-money or compensation claimed by any party interested in or entitled to sell and convey such lands, and who shall not consent to such entry, or such a sum as shall, by a surveyor appointed by two justices (*f*) in the manner hereinbefore provided in the case of parties who cannot be found, be determined to be the value of such lands, or of the interest therein which such party is entitled to or enabled to sell and convey, and also to give to such party a bond, under the common seal of the promoters, if they be a corporation, or if they be not a corporation under the hands and seals of the said promoters, or any two of them, with two sufficient sureties to be approved of by two justices in case the parties differ, in a penal sum equal to the sum so to be deposited, conditioned for payment to such party, or for deposit in the bank for the benefit of the parties interested in such lands, as the case may require, under the provisions herein contained, of all such purchase-money or compensation as may in manner hereinbefore provided be determined to be payable by the promoters of the undertaking in respect of the land so entered upon, together with interest thereon, at the rate of five pounds per centum per annum, from the time of entering on such lands until such purchase-money or compensation shall be paid to such party or deposited in the bank for the benefit of the parties interested in such lands under the provisions herein contained; and upon such deposit by way of security being made as aforesaid, and such bond being delivered or tendered to such non-consenting party as aforesaid, it shall be lawful for the promoters of the undertaking to enter upon and use such lands, without having first paid or deposited the purchase-money or compensation in other cases required to be paid or deposited by them before entering upon any lands to be taken by them under the provisions of this or the special act.

Promoters to be allowed to enter on lands before purchase, on making deposit by way of security and giving bond.

86. The money so to be deposited as last aforesaid shall be paid into the bank in the name and with the privity of the accountant-general of the Court of Chancery (*g*) [*in England or the Court of Exchequer in Ireland*] (*h*), to be placed to his account there to the credit of the parties interested in or entitled to sell and convey the lands so to be entered upon, and who shall not have consented to such entry, subject to the control and disposition of the said court; and upon such deposit being made, the cashier of the bank shall give to the promoters of the undertaking, or to the party paying in such money by their direction, a receipt for such money, specifying therein

Upon deposit being made, cashier to give receipt.

(*f*) In the case of railways by the Board of Trade. see Railway Companies Act, 1867, s. 36, *post*, p. 458.

(*g*) Now the paymaster-general (Court of Chancery (Funds) Act, 1872, s. 6).

(*h*) Repealed by S. L. R. Act, 1892.

for what purpose and to whose credit the same shall have been paid in.

Deposit to remain as a security, and to be applied under the direction of the court.

87. The money so deposited as last aforesaid shall remain in the bank, by way of security to the parties whose lands shall so have been entered upon for the performance of the condition of the bond to be given by the promoters of the undertaking, as hereinbefore mentioned, and the same may, on the application by petition of the promoters of the undertaking, be ordered to be invested in bank annuities, or government securities, and accumulated; and upon the condition of such bond being fully performed, it shall be lawful for the Court of Chancery [*in England or the Court of Exchequer in Ireland*] (*h*), upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the promoters of the undertaking, or if such condition shall not be fully performed, it shall be lawful for the said court to order the same to be applied in such manner as it shall think fit for the benefit of the parties for whose security the same shall so have been deposited.

The company may pay the deposit money into the bank by way of security during the time that the office of the accountant-general is closed.

88. If at any time the company be unable, by reason of the closing of the office of the accountant-general of the Court of Chancery (*i*) [*in England or the Court of Exchequer in Ireland*] (*h*), to obtain his authority in respect of the payment of any sum of money so authorized to be deposited in the bank by way of security as aforesaid, it shall be lawful for the company to pay into the bank to the credit of such party or matter as the case may require (subject nevertheless to being dealt with as hereinafter provided, and not otherwise), such sum of money as the promoters of the undertaking shall, by some writing signed by their secretary or solicitors for the time being, addressed to [*the governor and company of*] (*j*) the bank in that behalf, request, and upon any such payment being made the cashier of the bank shall give a certificate thereof; and in every such case, within ten days after the re-opening of the said accountant-general's office, the solicitor for the promoters of the undertaking shall there bespeak the direction for the payment of such sum into the name of the accountant-general (*k*), and upon production of such direction at the Bank of England the money so previously paid in shall be placed to the credit of the said accountant-general accordingly, and the receipt for the said payment be given to the party making the same in the usual way for the purpose of being filed at the Report office.

Penalty on the promoters of the undertaking entering upon lands without consent before

89. If the promoters of the undertaking or any of their contractors shall, except as aforesaid, wilfully enter upon and take possession of any lands which shall be required to be purchased or permanently used for the purposes of the special act, without such consent as aforesaid, or without having made such payment for the benefit of

(*h*) Repealed by S. L. R. Act, 1892.

(*i*) Now the paymaster-general (Court of Chancery (Funds) Act, 1872, s. 6).

(*j*) Repealed by S. L. R. Act, 1891. See Interpretation Act, 1889, s. 12, sub-ss. 18, 19.

(*k*) Now the paymaster-general (Court of Chancery (Funds) Act, 1872, s. 6).

the parties interested in the lands, or such deposit by way of security as aforesaid, the promoters of the undertaking shall forfeit to the party in possession of such lands the sum of ten pounds over and above the amount of any damage done to such lands by reason of such entry and taking possession as aforesaid, such penalty and damage respectively to be recovered before two justices; and if the promoters of the undertaking or their contractors shall, after conviction in such penalty as aforesaid, continue in unlawful possession of any such lands, the promoters of the undertaking shall be liable to forfeit the sum of twenty-five pounds for every day they or their contractors shall so remain in possession as aforesaid, such penalty to be recoverable by the party in possession of such lands, with costs, by action in any of the superior courts: provided always, that nothing herein contained shall be held to subject the promoters of the undertaking to the payment of any such penalties as aforesaid, if they shall *bonâ fide* and without collusion have paid the compensation agreed or awarded to be paid in respect of the said lands to any person whom the promoters of the undertaking may have reasonably believed to be entitled thereto, or shall have deposited the same in the bank for the benefit of the parties interested in the lands, or made such deposit by way of security in respect thereof as hereinbefore mentioned, although such person may not have been legally entitled thereto.

payment of
the purchase-
money.

90. On the trial of any action for any such penalty as aforesaid the decision of the justices under the provision hereinbefore contained shall not be held conclusive as to the right of entry on any such lands by the promoters of the undertaking.

Decision of
justices not
conclusive as
to the right of
the promoters.

91. If in any case in which, according to the provisions of this or the special act, or any act incorporated therewith, the promoters of the undertaking are authorized to enter upon and take possession of any lands required for the purposes of the undertaking, the owner or occupier of any such lands or any other person refuse to give up the possession thereof, or hinder the promoters of the undertaking from entering upon or taking possession of the same, it shall be lawful for the promoters of the undertaking to issue their warrant to the sheriff to deliver possession of the same to the person appointed in such warrant to receive the same; and upon the receipt of such warrant the sheriff shall deliver possession of any such lands accordingly, and the costs accruing by reason of the issuing and execution of such warrant, to be settled by the sheriff, shall be paid by the person refusing to give possession, and the amount of such costs shall be deducted and retained by the promoters of the undertaking from the compensation, if any, then payable by them to such party, or if no such compensation be payable to such party, or if the same be less than the amount of such costs, then such costs, or the excess thereof beyond such compensation, if not paid on demand, shall be levied by distress, and upon application to any justice for that purpose he shall issue his warrant accordingly.

Proceedings
in case of
refusal to
deliver pos-
session of
lands.

92. And be it enacted, that no party shall at any time be required to sell or convey to the promoters of the undertaking a part only of

Parties not to
be required to
sell part of a
house.

any house or other building or manufactory, if such party be willing and able to sell and convey the whole thereof (*l*).

(*Intersected Lands (m).*)

And with respect to small portions of intersected land, be it enacted as follows:

Owners of intersected lands may insist on sale.

93. If any lands not being situate in a town or built upon (*n*) shall be so cut through and divided by the works as to leave, either on both sides or on one side thereof, a less quantity of land than half a statute acre, and if the owner of such small parcel of land require the promoters of the undertaking to purchase the same along with the other land required for the purposes of the special act, the promoters of the undertaking shall purchase the same accordingly, unless the owner thereof have other land adjoining to that so left into which the same can be thrown, so as to be conveniently occupied therewith; and if such owner have any other land so adjoining, the promoters of the undertaking shall, if so required by the owner, at their own expense, throw the piece of land so left into such adjoining land, by removing the fences and levelling the sites thereof, and by soiling the same in a sufficient and workmanlike manner.

Exception.

Promoters of the undertaking may insist on purchase where expense of bridges, &c. exceeds the value.

94. If any such land shall be so cut through and divided as to leave on either side of the works a piece of land of less extent than half a statute acre, or of less value than the expense of making a bridge, culvert, or such other communication between the land so divided as the promoters of the undertaking are, under the provisions of this or the special act, or any act incorporated therewith, compellable to make, and if the owner of such lands have not other lands adjoining such piece of land, and require the promoters of the undertaking to make such communication, then the promoters of the undertaking may require such owner to sell to them such piece of land, and any dispute as to the value of such piece of land, or as to what would be the expense of making such communication, shall be ascertained as herein provided for cases of disputed compensation; and on the occasion of ascertaining the value of the land required to be taken for the purposes of the works, the jury or the arbitrators, as the case may be, shall, if required by either party, ascertain by their verdict or award the value of any such severed piece of land, and also what would be the expense of making such communication.

(*Copyhold Lands (o).*)

And with respect to copyhold lands, be it enacted as follows:

Conveyances of copyhold lands to be enrolled.

95. Every conveyance to the promoters of the undertaking, of any lands which shall be of copyhold or customary tenure, or of the nature thereof, shall be entered on the rolls of the manor of which

(*l*) *Vide ante*, p. 35.

(*m*) *Vide ante*, p. 34.

(*n*) *Vide ante*, pp. 44, 312; and cf. s. 128, *post*, p. 428.

(*o*) *Vide ante*, p. 285.

the same shall be held or parcel; and on payment to the steward of such manor of such fees as would be due to him on the surrender of the same lands to the use of a purchaser thereof he shall make such enrolment; and every such conveyance, when so enrolled, shall have the like effect in respect of such copyhold or customary lands, as if the same had been of freehold tenure; nevertheless, until such lands shall have been enfranchised by virtue of the powers hereinafter contained, they shall continue subject to the same fines, rents, heriots, and services as were theretofore payable and of right accustomed.

96. Within three months after the enrolment of the conveyance of any such copyhold or customary lands, or within one month after the promoters of the undertaking shall enter upon and make use of the same for the purposes of the works, whichever shall first happen, or if more than one parcel of such lands holden of the same manor shall have been taken by them, then within one month after the last of such parcels shall have been so taken or entered on by them, the promoters of the undertaking shall procure the whole of the lands holden of such manor so taken by them to be enfranchised, and for that purpose shall apply to the lord of the manor whereof such lands are holden to enfranchise the same, and shall pay to him such compensation in respect thereof as shall be agreed upon between them and him, and if the parties fail to agree respecting the amount of the compensation to be paid for such enfranchisement, the same shall be determined as in other cases of disputed compensation; and in estimating such compensation the loss in respect of the fines, heriots, and other services payable on death, descent, or alienation, or any other matters which would be lost by the vesting of such copyhold or customary lands in the promoters of the undertaking, or by the enfranchisement of the same, shall be allowed for.

Copyhold
lands to be
enfranchised.

Compensation
for enfran-
chisement.

97. Upon payment or tender of the compensation so agreed upon or determined, or on deposit thereof in the bank in any of the cases hereinbefore in that behalf provided, the lord of the manor whereof such copyhold or customary lands shall be holden shall enfranchise such lands, and the lands so enfranchised shall for ever thereafter be held in free and common socage; and in default of such enfranchisement by the lord of the manor, or if he fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of the enfranchisement whereof such compensation shall have been deposited as aforesaid shall be deemed to be enfranchised, and shall be for ever thereafter held in free and common socage.

Lord of the
manor to
enfranchise
on payment of
compensation.

Enfranchise-
ment by deed
poll in certain
cases.

98. If any such copyhold or customary lands be subject to any customary or other rent, and part only of the land subject to any such rent be required to be taken for the purposes of the special act, the apportionment of such rent may be settled by agreement between the owner of the lands and the lord of the manor on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement, then the same shall be

Apportion-
ment of copy-
hold rents.

settled by two justices: and the enfranchisement of any copyhold or customary lands taken by virtue of this or the special act, or the apportionment of such rents, shall not affect in other respects any custom by or under which any such copyhold or customary lands not taken for such purposes shall be held; and if any of the lands so required be released from any portion of the rents to which they were subject jointly with any other lands, such last-mentioned lands shall be charged with the remainder only of such rents; and with reference to any such apportioned rents, the lord of the manor shall have all the same rights and remedies over the lands to which such apportioned rent shall have been assigned or attributed as he had previously over the whole of the lands subject to such rents for the whole of such rents.

(Common or Waste Lands (p).)

And with respect to any such lands, being common or waste lands, be it enacted as follows:

Compensation for common lands, where held of a manor, &c., how to be paid.

99. The compensation in respect of the right in the soil of any lands subject to any rights of common shall be paid to the lord of the manor, in case he shall be entitled to the same, or to such party, other than the commoners, as shall be entitled to such right in the soil; and the compensation in respect of all other commonable and other rights in or over such lands, including therein any commonable or other rights to which the lord of the manor may be entitled other than his right in the soil of such lands, shall be determined and paid and applied in manner hereinafter provided with respect to common lands the right in the soil of which shall belong to the commoners; and upon payment or deposit in the bank of the compensation so determined all such commonable and other rights shall cease and be extinguished.

Lord of the manor, &c., to convey to the promoters of the undertaking on receiving compensation for his interest.

100. Upon payment or tender to the lord of the manor, or such other party as aforesaid, of the compensation which shall have been agreed upon or determined in respect of the right in the soil of any such lands, or on deposit thereof in the bank in any of the cases hereinbefore in that behalf provided, such lord of the manor, or such other party as aforesaid, shall convey such lands to the promoters of the undertaking, and such conveyance shall have the effect of vesting such lands in the promoters of the undertaking, in like manner as if such lord of the manor, or such other party as aforesaid, had been seised in fee simple of such lands at the time of executing such conveyance; and in default of such conveyance it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect whereof such last-mentioned compensation shall have been deposited as aforesaid shall vest absolutely in the promoters of the undertaking, and they shall be entitled to immediate possession thereof, subject nevertheless to the commonable and other rights theretofore affecting

Deed poll to be executed in certain cases.

the same, until such rights shall have been extinguished by payment or deposit of the compensation for the same in manner hereinafter provided.

101. The compensation to be paid with respect to any such lands being common lands, or in the nature thereof, the right to the soil of which shall belong to the commoners, as well as the compensation to be paid for the commonable and other rights in or over common lands the right in the soil whereof shall not belong to the commoners, other than the compensation to the lord of the manor, or other party, entitled to the soil thereof, in respect of his right in the soil thereof, shall be determined by agreement between the promoters of the undertaking and a committee of the parties entitled to commonable or other rights in such lands, to be appointed as next hereinafter mentioned.

Compensation for common lands where not held of a manor, how to be ascertained.

102. It shall be lawful for the promoters of the undertaking to convene a meeting of the parties entitled to commonable or other rights over or in such lands to be held at some convenient place in the neighbourhood of the lands for the purpose of their appointing a committee to treat with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable or other rights; and every such meeting shall be called by public advertisement, to be inserted once at least in two consecutive weeks in some newspaper circulating in the county or in the respective counties and in the neighbourhood in which such lands shall be situate, the last of such insertions being not more than fourteen nor less than seven days prior to any such meeting; and notice of such meeting shall also, not less than seven days previous to the holding thereof, be affixed upon the door of the parish church where such meeting is intended to be held, or if there be no such church some other place in the neighbourhood to which notices are usually affixed; and if such lands be parcel or holden of a manor, a like notice shall be given to the lord of such manor.

A meeting of the parties interested to be convened.

103. It shall be lawful for the meeting so called to appoint a committee, not exceeding five in number, of the parties entitled to any such rights; and at such meeting the decision of the majority of the persons entitled to commonable rights present shall bind the minority and all absent parties.

Meeting to appoint a committee.

104. It shall be lawful for the committee so chosen to enter into an agreement with the promoters of the undertaking for the compensation to be paid for the extinction of such commonable and other rights and all matters relating thereto, for and on behalf of themselves and all other parties interested therein; and all such parties shall be bound by such agreement; and it shall be lawful for such committee to receive the compensation so agreed to be paid, and the receipt of such committee, or of any three of them, for such compensation shall be an effectual discharge for the same; and such compensation, when received, shall be apportioned by the committee among the several persons interested therein, according to their respective interests, but the promoters of the undertaking shall not be

Committee to agree with the promoters of the undertaking.

bound to see to the apportionment or to the application of such compensation, nor shall they be liable for the misapplication or non-application thereof.

- Disputes to be settled as in other cases.

105. If upon such committee being appointed they shall fail to agree with the promoters of the undertaking as to the amount of the compensation to be paid as aforesaid, the same shall be determined as in other cases of disputed compensation.

If no committee be appointed, the amount to be determined by a surveyor.

106. If, upon being duly convened by the promoters of the undertaking, no effectual meeting of the parties entitled to such commonable or other rights shall take place, or if, taking place, such meeting fail to appoint such committee, the amount of such compensation shall be determined by a surveyor to be appointed by two justices, as hereinbefore provided in the case of parties who cannot be found (*q*).

Upon payment of compensation payable to commoners the lands to vest.

107. Upon payment or tender to such committee or any three of them, or if there shall be no such committee then upon deposit in the bank in the manner provided in the like case of the compensation which shall have been agreed upon or determined in respect of such commonable or other rights, it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the lands in respect of which such compensation shall have been so paid or deposited shall vest in the promoters of the undertaking, freed and discharged from all such commonable or other rights, and they shall be entitled to immediate possession thereof; and it shall be lawful for the Court of Chancery [*in England, or the Court of Exchequer in Ireland*] (*r*), by an order to be made upon petition, to order payment of the money so deposited to a committee to be appointed as aforesaid, or to make such other order in respect thereto, for the benefit of the parties interested, as it shall think fit (*s*).

(*Mortgaged Lands (t).*)

And with respect to lands subject to mortgage, be it enacted as follows:

Power to redeem mortgages.

108. It shall be lawful for the promoters of the undertaking to purchase or redeem the interest of the mortgagee of any such lands which may be required for the purposes of the special act, and that whether they shall have previously purchased the equity of redemption of such lands or not, and whether the mortgagee thereof be entitled thereto in his own right or in trust for any other party, and whether he be in possession of such lands by virtue of such mortgage or not, and whether such mortgage affects such lands solely,

(*q*) *Ante*, ss. 50, 51.

(*r*) Repealed by S. L. R. Act, 1892.

(*s*) See also Inclosure Act, 1852, s. 22; Inclosure Act, 1854, ss. 15—20, *post*, p. 467; Commonable Rights Compensation Act, 1882, *post*, p. 469.

(*t*) *Vide ante*, p. 293.

or jointly with any other lands not required for the purposes of the special act, and in order thereto the promoters of the undertaking may pay or tender to such mortgagee the principal and interest due on such mortgage, together with his costs and charges, if any, and also six months' additional interest, and thereupon such mortgagee shall immediately convey his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct, or the promoters of the undertaking may give notice in writing to such mortgagee that they will pay off the principal and interest due on such mortgage at the end of six months, computed from the day of giving such notice; and if they shall have given any such notice, or if the party entitled to the equity of redemption of any such lands shall have given six months' notice of his intention to redeem the same, then at the expiration of either of such notices, or at any intermediate period, upon payment or tender by the promoters of the undertaking to the mortgagee of the principal money due on such mortgage, and the interest which would become due at the end of six months from the time of giving either of such notices, together with his costs and expenses, if any, such mortgagee shall convey or release his interest in the lands comprised in such mortgage to the promoters of the undertaking, or as they shall direct.

109. If, in either of the cases aforesaid, upon such payment or tender, any mortgagee shall fail to convey or release his interest in such mortgage as directed by the promoters of the undertaking, or if he fail to adduce a good title thereto to their satisfaction, then it shall be lawful for the promoters of the undertaking to deposit in the bank, in the manner provided by this act in like cases, the principal and interest, together with the costs, if any, due on such mortgage, and also, if such payment be made before the expiration of six months' notice as aforesaid, such further interest as would at that time become due; and it shall be lawful for them, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon, as well as upon such conveyance by the mortgagee, if any such be made, all the estate and interest of such mortgagee, and of all persons in trust for him, or for whom he may be a trustee, in such lands, shall vest in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession.

Deposit of mortgage money on refusal to accept.

110. If any such mortgaged lands shall be of less value than the principal, interest, and costs secured thereon, the value of such lands, or the compensation to be made by the promoters of the undertaking in respect thereof, shall be settled by agreement between the mortgagee of such lands and the party entitled to the equity of redemption thereof on the one part, and the promoters of the undertaking on the other part, and if the parties aforesaid fail to agree respecting the amount of such value or compensation, the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to the mortgagee in satis-

Sum to be paid when mortgage exceeds the value of the lands.

faction of his mortgage debt so far as the same will extend, and upon payment or tender thereof the mortgagee shall convey or release all his interest in such mortgaged lands to the promoters of the undertaking, or as they shall direct.

Deposit of
such sum
when refused
on tender.

111. If, upon such payment or tender as aforesaid being made, any such mortgagee fail so to convey his interest in such mortgage or to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such value or compensation in the bank, in the manner provided by this act in like cases, and every such payment or deposit shall be accepted by the mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of such mortgaged lands from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them; and thereupon such lands, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, shall become absolutely vested in the promoters of the undertaking, and they shall be entitled to immediate possession thereof in case such mortgagee were himself entitled to such possession; nevertheless, all rights and remedies possessed by the mortgagee against the mortgagor, by virtue of any bond or covenant or other obligation, other than the right to such lands, shall remain in force in respect of so much of the mortgage debt as shall not have been satisfied by such payment or deposit.

Sum to be
paid where
part only of
mortgaged
lands taken.

112. If a part only of any such mortgaged lands be required for the purposes of the special act, and if the part so required be of less value than the principal money, interest, and costs secured on such lands, and the mortgagee shall not consider the remaining part of such lands a sufficient security for the money charged thereon, or be not willing to release the part so required, then the value of such part, and also the compensation (if any) to be paid in respect of the severance thereof or otherwise, shall be settled by agreement between the mortgagee and the party entitled to the equity of redemption of such land on the one part, and the promoters of the undertaking on the other, and if the parties aforesaid fail to agree respecting the amount of such value or compensation the same shall be determined as in other cases of disputed compensation; and the amount of such value or compensation, being so agreed upon or determined, shall be paid by the promoters of the undertaking to such mortgagee in satisfaction of his mortgage debt, so far as the same will extend; and thereupon such mortgagee shall convey or release to them, or as they shall direct, all his interest in such mortgaged lands the value whereof shall have been so paid; and a memorandum of what shall have been so paid shall be endorsed on the deed creating such mortgage, and shall be signed by the mortgagee; and a copy of such memorandum shall at the same time (if required) be furnished by the promoters of the undertaking at their expense, to the party entitled to the equity of redemption of the lands comprised in such mortgage deed.

113. If, upon payment or tender to any such mortgagee of the amount of the value or compensation so agreed upon or determined, such mortgagee shall fail to convey or release to the promoters of the undertaking, or as they shall direct, his interest in the lands in respect of which such compensation shall so have been paid or tendered, or if he shall fail to adduce a good title thereto to the satisfaction of the promoters of the undertaking, it shall be lawful for the promoters of the undertaking to pay the amount of such value or compensation into the bank, in the manner provided by this act in the case of moneys required to be deposited in such bank, and such payment or deposit shall be accepted by such mortgagee in satisfaction of his mortgage debt, so far as the same will extend, and shall be a full discharge of the portion of the mortgaged lands so required from all money due thereon; and it shall be lawful for the promoters of the undertaking, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them: and thereupon such lands shall become absolutely vested in the promoters of the undertaking, as to all such estate and interest as were then vested in the mortgagee, or any person in trust for him, and in case such mortgagee were himself entitled to such possession they shall be entitled to immediate possession thereof; nevertheless, every such mortgagee shall have the same powers and remedies for recovering or compelling payment of the mortgage money, or the residue thereof (as the case may be), and the interest thereof respectively, upon and out of the residue of such mortgaged lands, or the portion thereof not required for the purposes of the special act, as he would otherwise have had or been entitled to for recovering or compelling payment thereof upon or out of the whole of the lands originally comprised in such mortgage.

Deposit of such sum when refused on tender.

Powers of mortgagee for recovery of residue of mortgage debt.

114. Provided always, that in any of the cases hereinbefore provided with respect to lands subject to mortgage, if in the mortgage deed a time shall have been limited for payment of the principal money thereby secured, and under the provisions hereinbefore contained the mortgagee shall have been required to accept payment of his mortgage money, or of part thereof, at a time earlier than the time so limited, the promoters of the undertaking shall pay to such mortgagee, in addition to the sum which shall have been so paid off, all such costs and expenses as shall be incurred by such mortgagee in respect of or which shall be incidental to the re-investment of the sum so paid off, such costs in case of difference to be taxed and payment thereof enforced in the manner herein provided with respect to the costs of conveyances; and if the rate of interest secured by such mortgage be higher than at the time of the same being so paid off can reasonably be expected to be obtained on re-investing the same, regard being had to the then current rate of interest, such mortgagee shall be entitled to receive from the promoters of the undertaking, in addition to the principal and interest hereinbefore provided for, compensation in respect of the loss to be sustained by him by reason of his mortgage money being so prematurely paid off, the amount of such compensation to be ascertained, in case of difference, as in other cases of disputed compensation; and until payment or tender of such

Compensation to be made in certain cases if mortgage paid off before the stipulated time.

compensation as aforesaid the promoters of the undertaking shall not be entitled, as against such mortgagee, to possession of the mortgaged lands under the provision hereinbefore contained.

(Lands subject to Rent-charges, &c. (u).)

And with respect to lands charged with any rent-service, rent-charge, or chief or other rent, or other payment or incumbrance not hereinbefore provided for, be it enacted as follows:

Consideration to be paid for release of lands from rent-charges.

115. If any difference shall arise between the promoters of the undertaking and the party entitled to any such charge upon any lands required to be taken for the purposes of the special act, respecting the consideration to be paid for the release of such lands therefrom, or from the portion thereof affecting the lands required for the purposes of the special act, the same shall be determined as in other cases of disputed compensation.

Release of part of lands from charge.

116. If part only of the lands charged with any such rent-service, rent-charge, chief or other rent, payment or incumbrance, be required to be taken for the purposes of the special act, the apportionment of any such charge may be settled by agreement between the party entitled to such charge and the owner of the lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement the same shall be settled by two justices; but if the remaining part of the lands so jointly subject be a sufficient security for such charge, then, with consent of the owner of the lands so jointly subject, it shall be lawful for the party entitled to such charge to release therefrom the lands required, on condition or in consideration of such other lands remaining exclusively subject to the whole thereof.

Deposit in case of refusal to release.

117. Upon payment or tender of the compensation so agreed upon or determined to the party entitled to any such charge as aforesaid, such party shall execute to the promoters of the undertaking a release of such charge; and if he fail so to do, or if he fail to adduce good title to such charge, to the satisfaction of the promoters of the undertaking, it shall be lawful for them to deposit the amount of such compensation in the bank in the manner hereinbefore provided in like cases, and also, if they think fit, to execute a deed poll, duly stamped, in the manner hereinbefore provided in the case of the purchase of lands by them, and thereupon the rent-service, rent-charge, chief or other rent, payment or incumbrance, or the portion thereof in respect whereof such compensation shall so have been paid, shall cease and be extinguished.

Charge to continue on lands not taken.

118. If any such lands be so released from any such charge or incumbrance, or portion thereof, to which they were subject jointly with other lands, such last-mentioned lands shall alone be charged with the whole of such charge, or with the remainder thereof, as the case may be, and the party entitled to the charge shall have all the same rights and remedies over such last-mentioned lands, for the whole or for the remainder of the charge, as the case may be, as he had previously over the whole of the lands subject to such charge;

(u) Vide ante, p. 297.

and if upon any such charge or portion of charge being so released the deed or instrument creating or transferring such charge be tendered to the promoters of the undertaking for the purpose, they or two of them shall subscribe, or if they be a corporation shall affix their common seal to a memorandum of such release endorsed on such deed or instrument, declaring what part of the lands originally subject to such charge shall have been purchased by virtue of the special act, and if the lands be released from part of such charge, what proportion of such charge shall have been released, and how much thereof continues payable, or if the lands so required shall have been released from the whole of such charge, then that the remaining lands are thenceforward to remain exclusively charged therewith; and such memorandum shall be made and executed at the expense of the promoters of the undertaking, and shall be evidence in all courts and elsewhere of the facts therein stated, but not so as to exclude any other evidence of the same facts.

(Lands let on Lease (x).)

And with respect to lands subject to leases, be it enacted as follows:

119. If any lands shall be comprised in a lease, for a term of years unexpired, part only of which lands shall be required for the purposes of the special act, the rent payable in respect of the lands comprised in such lease shall be apportioned between the lands so required, and the residue of such lands; and such apportionment may be settled by agreement between the lessor and lessee of such lands on the one part, and the promoters of the undertaking on the other part, and if such apportionment be not so settled by agreement between the parties, such apportionment shall be settled by two justices; and after such apportionment the lessee of such lands shall, as to all future accruing rent, be liable only to so much of the rent as shall be so apportioned in respect of the lands not required for the purposes of the special act; and as to the lands not so required, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease; and all the covenants, conditions and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard to that part of the land which shall not be required for the purposes of the special act, in the same manner as they would have done in case such part only of the land had been included in the lease.

Where part only of lands under lease taken, the rent to be apportioned.

120. Every such lessee as last aforesaid shall be entitled to receive from the promoters of the undertaking compensation for the damage done to him in his tenancy by reason of the severance of the lands required from those not required, or otherwise by reason of the execution of the works.

Tenants to be compensated.

Compensation to be made to tenants from year to year, &c.

121. If any such lands shall be in the possession of any person having no greater interest therein than as a tenant for a year, or from year to year, and if such person be required to give up possession of any lands so occupied by him before the expiration of his term or interest therein, he shall be entitled to compensation for the value of his unexpired term or interest in such lands, and for any just allowance which ought to be made to him by an incoming tenant, and for any loss or injury he may sustain, or if a part only of such lands be required, compensation for the damage done to him in his tenancy by severing the lands held by him, or otherwise injuriously affecting the same; and the amount of such compensation shall be determined by two justices, in case the parties differ about the same; and upon payment or tender of the amount of such compensation all such persons shall respectively deliver up to the promoters of the undertaking, or to the person appointed by them to take possession thereof, any such lands in their possession required for the purposes of the special act.

Where greater interest claimed than from year to year, lease or grant to be produced.

122. If any party, having a greater interest than as tenant at will, claim compensation in respect of any unexpired term or interest under any lease or grant of any such lands, the promoters of the undertaking may require such party to produce the lease or grant in respect of which such claims shall be made, or the best evidence thereof in his power; and if after demand made in writing by the promoters of the undertaking, such lease or grant, or such best evidence thereof, be not produced within twenty-one days, the party so claiming compensation shall be considered as a tenant holding only from year to year, and be entitled to compensation accordingly.

Limit of time for compulsory purchase.

123. And be it enacted, that the powers of the promoters of the undertaking for the compulsory purchase or taking of lands for the purposes of the special act shall not be exercised after the expiration of the prescribed period, and if no period be prescribed, not after the expiration of three years from the passing of the special act.

(Omitted Interests in Lands (y).)

And with respect to interests in lands which have by mistake been omitted to be purchased, be it enacted as follows:

Purchase by promoters of the undertaking after entry on lands of interests the purchase whereof may have been omitted by mistake.

124. If, at any time after the promoters of the undertaking shall have entered upon any lands which under the provisions of this or the special act, or any act incorporated therewith, they were authorized to purchase, and which shall be permanently required for the purposes of the special act, any party shall appear to be entitled to any estate, right, or interest in or charge affecting such lands which the promoters of the undertaking shall through mistake or inadvertence have failed or omitted duly to purchase or to pay compensation for, then, whether the period allowed for the purchase of lands shall have expired or not, the promoters of the undertaking shall remain in the undisturbed possession of such lands, provided within six months after notice of such estate, right, interest, or charge, in case the

(y) *Vide ante*, p. 68.

same shall not be disputed by the promoters of the undertaking, or in case the same shall be disputed, then within six months after the right thereto shall have been finally established by law in favour of the party claiming the same, the promoters of the undertaking shall purchase or pay compensation for the same, and shall also pay to such party, or to any other party who may establish a right thereto, full compensation for the mesne profits or interest which would have accrued to such parties respectively in respect thereof during the interval between the entry of the promoters of the undertaking thereon and the time of the payment of such purchase-money or compensation by the promoters of the undertaking, so far as such mesne profits or interest may be recoverable in law or equity; and such purchase-money or compensation shall be agreed on or awarded and paid in like manner as according to the provisions of this act the same respectively would have been agreed on or awarded and paid in case the promoters of the undertaking had purchased such estate, right, interest, or charge before their entering upon such land, or as near thereto as circumstances will admit.

Mesne profits to be accounted for.

125. In estimating the compensation to be given for any such last-mentioned lands, or any estate or interest in the same, or for any mesne profits thereof, the jury, or arbitrators, or justices, as the case may be, shall assess the same according to what they shall find to have been the value of such lands, estate, or interest, and profits, at the time such lands were entered upon by the promoters of the undertaking, and without regard to any improvements or works made in the said lands by the promoters of the undertaking, and as though the works had not been constructed.

How value of such interests and mesne profits shall be estimated.

126. In addition to the said purchase-money, compensation, or satisfaction, and before the promoters of the undertaking shall become absolutely entitled to any such estate, interest, or charge, or to have the same merged or extinguished for their benefit, they shall, when the right to any such estate, interest, or charge shall have been disputed by the company, and determined in favour of the party claiming the same, pay the full costs and expenses of any proceedings at law or in equity for the determination or recovery of the same to the parties with whom any such litigation in respect thereof shall have taken place; and such costs and expenses shall, in case the same shall be disputed, be settled by the proper officer of the court in which such litigation took place.

Promoters of the undertaking to pay the costs of litigation as to such interests.

(Superfluous Lands (z).)

And with respect to lands acquired by the promoters of the undertaking under the provisions of this or the special act, or any act incorporated therewith, but which shall not be required for the purposes thereof, be it enacted as follows:

127. Within the prescribed period, or if no period be prescribed within ten years after the expiration of the time limited by the special act for the completion of the works, the promoters of the

Lands not wanted to be sold within ten years after

expiration of time limited for completion of works, or in default to vest in owners of adjoining lands.

Lands to be offered to owner of lands from which they were originally taken, or to adjoining owners.

Right of pre-emption to be claimed within six weeks.

Evidence of refusal, &c. to exercise right.

Differences as to price to be settled by arbitration.

Lands to be conveyed to the purchasers.

undertaking shall absolutely sell and dispose of all such superfluous lands, and apply the purchase-money arising from such sales to the purposes of the special act; and in default thereof all such superfluous lands remaining unsold at the expiration of such period shall thereupon vest in and become the property of the owners of the lands adjoining thereto, in proportion to the extent of their lands respectively adjoining the same.

128. Before the promoters of the undertaking dispose of any such superfluous lands they shall, unless such lands be situate within a town, or be lands built upon or used for building purposes (*a*), first offer to sell the same to the person then entitled to the lands (if any) from which the same were originally severed: or if such person refuse to purchase the same, or cannot after diligent inquiry be found, then the like offer shall be made to the person or to the several persons whose lands shall immediately adjoin the lands so proposed to be sold, such persons being capable of entering into a contract for the purchase of such lands; and where more than one such person shall be entitled to such right of pre-emption such offer shall be made to such persons in succession, one after another, in such order as the promoters of the undertaking shall think fit.

129. If any such persons be desirous of purchasing such lands, then within six weeks after such offer of sale they shall signify their desire in that behalf to the promoters of the undertaking, or if they decline such offer, or if for six weeks they neglect to signify their desire to purchase such lands, the right of pre-emption of every such person so declining or neglecting in respect of the lands included in such offer shall cease; and a declaration in writing made before a justice by some person not interested in the matter in question, stating that such offer was made and was refused, or not accepted within six weeks from the time of making the same, or that the person or all the persons entitled to the right of pre-emption were out of the country, or could not after diligent inquiry be found, or were not capable of entering into a contract for the purchase of such lands, shall in all courts be sufficient evidence of the facts therein stated.

130. If any person entitled to such pre-emption be desirous of purchasing any such lands, and such person and the promoters of the undertaking do not agree as to the price thereof, then such price shall be ascertained by arbitration, and the costs of such arbitration shall be in the discretion of the arbitrators.

131. Upon payment or tender to the promoters of the undertaking of the purchase-money so agreed upon or determined as aforesaid they shall convey such lands to the purchasers thereof by deed under the common seal of the promoters of the undertaking, if they be a corporation, or if not a corporation under the hands and seals of the promoters of the undertaking, or any two of the directors or managers thereof acting by the authority of the body; and a deed so executed shall be effectual to vest the lands comprised therein in the purchaser of such lands for the estate which shall so have been purchased by him; and a receipt under such common seal, or under the hands of

(*a*) *Vide ante*, p. 312.

two of the directors or managers of the undertaking as aforesaid, shall be a sufficient discharge to the purchaser of any such lands for the purchase-money in such receipt expressed to be received.

132. In every conveyance of lands to be made by the promoters of the undertaking under this or the special act the word "grant" shall operate as express covenants by the promoters of the undertaking, for themselves and their successors, or for themselves, their heirs, executors, administrators, and assigns, as the case may be, with the respective grantees therein named, and the successors, heirs, executors, administrators, and assigns of such grantees, according to the quality or nature of such grants, and of the estate or interest therein expressed to be thereby conveyed, as follows, except so far as the same shall be restrained or limited by express words contained in any such conveyance: (that is to say,)

Effect of the word "grant" in conveyances.

A covenant that, notwithstanding any act or default done by the promoters of the undertaking, they were at the time of the execution of such conveyance seised or possessed of the lands or premises thereby granted for an indefeasible estate of inheritance in fee simple, free from all incumbrances done or occasioned by them, or otherwise for such estate or interest as therein expressed to be thereby granted, free from incumbrances done or occasioned by them:

A covenant that the grantee of such lands, his heirs, successors, executors, administrators, and assigns (as the case may be), shall quietly enjoy the same against the promoters of the undertaking, and their successors, and all other persons claiming under them, and be indemnified and saved harmless by the promoters of the undertaking and their successors from all incumbrances created by the promoters of the undertaking:

A covenant for further assurance of such lands, at the expense of such grantee, his heirs, successors, executors, administrators, or assigns (as the case may be), by the promoters of the undertaking, or their successors, and all other persons claiming under them:

And all such grantees, and their several successors, heirs, executors, administrators, and assigns respectively, according to their respective quality or nature, and the estate or interest in such conveyance expressed to be conveyed, may in all actions brought by them, assign breaches of covenants, as they might do if such covenants were expressly inserted in such conveyances.

(Land Tax and Poor's Rate (b).)

133. And be it enacted, that if the promoters of the undertaking become possessed by virtue of this or the special act, or any act incorporated therewith, of any lands charged with the land tax, or liable to be assessed to the poor's rate, they shall from time to time, until the works shall be completed and assessed to such land tax or poor's rate, be liable to make good the deficiency in the several

Land tax and poor's rate to be made good.

assessments for land tax and poor's rate by reason of such lands having been taken or used for the purposes of the works, and such deficiency shall be computed according to the rental at which such lands, with any building thereon, were valued or rated at the time of the passing of the special act; and on demand of such deficiency the promoters of the undertaking, or their treasurer, shall pay all such deficiencies to the collector of the said assessments respectively; nevertheless, if at any time the promoters of the undertaking think fit to redeem such land tax, they may do so in accordance with the powers in that behalf given by the acts for the redemption of the land tax.

Land tax may be redeemed.

(*Service of Notices, &c.*)

Service of notices upon promoters.

134. And be it enacted, that any summons or notice, or any writ or other proceeding at law or in equity, requiring to be served upon the promoters of the undertaking, may be served by the same being left at or transmitted through the post directed to the principal office of the promoters of the undertaking, or one of the principal offices where there shall be more than one, or being given or transmitted through the post directed to the secretary, or in case there be no secretary the solicitor of the said promoters.

(*Tender.*)

Tender of amends.

135. And be it enacted, that if any party shall have committed any irregularity, trespass, or other wrongful proceeding in the execution of this or the special act, or any act incorporated therewith, or by virtue of any power or authority thereby given, and if, before action brought in respect thereof, such party make tender of sufficient amends to the party injured, such last-mentioned party shall not recover in any such action; and if no such tender shall have been made it shall be lawful for the defendant, by leave of the court where such action shall be pending, at any time before issue joined, to pay into court such sum of money as he shall think fit, and thereupon such proceedings shall be had as in other cases where defendants are allowed to pay money into court.

(*Recovery of Penalties and Forfeitures.*)

And with respect to the recovery of forfeitures, penalties, and costs, be it enacted as follows:

Penalties to be summarily recovered before two justices.

136. Every penalty or forfeiture imposed by this or the special act, or by any bye-law made in pursuance thereof, the recovery of which is not otherwise provided for, may be recovered by summary proceeding before two justices; [and on complaint being made to any justice he shall issue a summons requiring the party complained against to appear before two justices at a time and place to be named in such summons; and every such summons shall be served on the party offending either in person or by leaving the same with some inmate at his usual place of abode; and upon the appearance of the party complained against, or in his absence, after proof of the due

service of such summons, it shall be lawful for any two justices to proceed to the hearing of the complaint, and that although no information in writing or in print shall have been exhibited before them; and upon proof of the offence, either by the confession of the party complained against, or upon the oath of one credible witness or more, it shall be lawful for such justices to convict the offender, and upon such conviction to adjudge the offender to pay the penalty or forfeiture incurred, as well as such costs attending the conviction as such justices shall think fit (c).]

[137. *If, forthwith upon any such adjudication as aforesaid, the amount of the penalty or forfeiture, and of such costs as aforesaid, be not paid, the amount of such penalty and costs shall be levied by distress, and such justices or either of them shall issue their or his warrant of distress accordingly (c).]*

Penalties to be levied by distress.

138. Where in this or the special act, or any act incorporated therewith, any sum of money, whether in the nature of penalty, costs, or otherwise, is directed to be levied by distress, such sum of money shall be levied by distress and sale of the goods and chattels of the party liable to pay the same; and the overplus arising from the sale of such goods and chattels, after satisfying such sum of money and the expenses of the distress and sale, shall be returned, on demand, to the party whose goods shall have been distrained.

Distress, how to be levied.

139. The justices by whom any such penalty or forfeiture shall be imposed may, where the application thereof is not otherwise provided for, award not more than one-half thereof to the informer, and shall award the remainder to the overseers of the poor of the parish in which the offence shall have been committed, to be applied in aid of the poor's rate of such parish, [*or if the place wherein the offence shall have been committed shall be extra-parochial, then such justices shall direct such remainder to be applied in aid of the poor's rate of such extra-parochial place, or if there shall not be any poor's rate therein in aid of the poor's rate of any adjoining parish or district (d).]*

Application of penalties.

140. If any such sum shall be payable by the promoters of the undertaking, and if sufficient goods of the said promoters cannot be found whereon to levy the same, it may, if the amount thereof do not exceed twenty pounds, be recovered by distress of the goods of the treasurer of the said promoters, and the justices aforesaid, or either of them, on application, shall issue their or his warrant accordingly; but no such distress shall issue against the goods of such treasurer unless seven days' previous notice in writing, stating the amount so due, and demanding payment thereof, have been given to such treasurer or left at his residence; and if such treasurer pay any money under such distress as aforesaid he may retain the amount so paid by him, and all costs and expenses occasioned thereby, out of any

Distress against the treasurer.

Notice to treasurer.

Reimbursement of treasurer.

(c) Repealed by S. L. R. Act, 1892. Ss. 136, 137, 142, 143, 144, 146 are also repealed wholly or in part by the Summary Jurisdiction Act, 1884, s. 4, and the provisions of the Summary Jurisdiction Acts will now apply in their place.

(d) Repealed by S. L. R. Act, 1875.

money belonging to the promoters of the undertaking coming into his custody or control, or he may sue them for the same.

Distress not unlawful for want of form, &c.

141. No distress levied by virtue of this or the special act, or any act incorporated therewith, shall be deemed unlawful, nor shall any party making the same be deemed a trespasser on account of any defect or want of form in the summons, conviction, warrant of distress, or other proceeding relating thereto, nor shall such party be deemed a trespasser *ab initio* on account of any irregularity afterwards committed by him, but all persons aggrieved by such defect or irregularity may recover full satisfaction for the special damage in an action upon the case.

Penalties to be sued for within six months.

[142. No person shall be liable to the payment of any penalty or forfeiture imposed by virtue of this or the special act, or any act incorporated therewith, for any offence made cognizable before a justice, unless the complaint respecting such offence shall have been made before such justice within six months next after the commission of such offence (e).]

Penalty on witnesses making default.

[143. It shall be lawful for any justice to summon any person to appear before him as a witness in any matter in which such justice shall have jurisdiction under the provisions of this or the special act at a time and place mentioned in such summons, and to administer to him an oath to testify the truth in such matter; and if any person so summoned shall, without reasonable excuse, refuse or neglect to appear at the time and place appointed for that purpose, having been paid or tendered a reasonable sum for his expenses, or if any person appearing shall refuse to be examined upon oath or to give evidence before such justice, every such person shall forfeit a sum not exceeding five pounds for every such offence (f).]

Form of conviction.

[144. The justices before whom any person shall be convicted of any offence against this or the special act, or any act incorporated therewith, may cause the conviction to be drawn up according to the form in the schedule (C) to this act annexed (g).]

Proceedings not to be quashed for want of form, &c.

145. No proceeding in pursuance of this or the special act, or any act incorporated therewith, shall be quashed or vacated for want of form, nor shall the same be removed by certiorari or otherwise into any of the superior courts.

(Appeals to Quarter Sessions.)

Parties allowed to appeal to quarter sessions on giving security.

146. If any party shall feel aggrieved by any determination or adjudication of any justice with respect to any penalty or forfeiture under the provisions of this or the special act, or any act incorporated therewith, such party may appeal to the general quarter sessions [for the county or place in which the cause of appeal shall have arisen; but no such appeal shall be entertained unless it be made within four months next after the making of such determination or adjudication, nor unless ten days' notice in writing of such appeal, stating the nature and grounds thereof, be given to the party against whom the appeal shall be brought, nor unless the appellant forthwith after such

(e) Repealed by S. L. R. Act, 1892, and see note (c), *ante*.

(f) Repealed by Summary Jurisdiction Act, 1884, s. 4, so far as relates to any matter to which the Summary Jurisdiction Acts apply.

(g) Repealed by S. L. R. Act, 1892, and see note (c), *ante*.

notice enter into recognizances, with two sufficient sureties, before a justice, conditioned duly to prosecute such appeal, and to abide the order of the court thereon (h)].

147. At the quarter sessions for which such notice shall be given the court shall proceed to hear and determine the appeal in a summary way, or they may, if they think fit, adjourn it to the following sessions; and upon the hearing of such appeal the court may, if they think fit, mitigate any penalty or forfeiture, or they may confirm or quash the adjudication, and order any money paid by the appellant, or levied by distress upon his goods, to be returned to him, and may also order such further satisfaction to be made to the party injured as they may judge reasonable; and they may make such order concerning the costs, both of the adjudication and of the appeal, as they may think reasonable.

Court to make such order as they think reasonable.

(Application of Penalties in Metropolis.)

148. Provided always, [and be it enacted (i),] that notwithstanding anything herein or in the special act, or any act incorporated therewith, contained, every penalty or forfeiture imposed by this or the special act, or any act incorporated therewith, or by any bye-law in pursuance thereof, in respect of any offence which shall take place within the metropolitan police district, shall be recovered, enforced, accounted for, and, except where the application thereof is otherwise specially provided for, shall be paid to the receiver of the metropolitan police district, and shall be applied in the same manner as penalties or forfeitures, other than fines upon drunken persons, or upon constables for misconduct, or for assaults upon police constables, are directed to be recovered, enforced, accounted for, paid, and applied by an act passed in the third year of the reign of her present Majesty, intituled "An Act for regulating the Police Courts in the Metropolis," and every order or conviction of any of the police magistrates in respect of any such forfeiture or penalty shall be subject to the like appeal and upon the same terms as is provided in respect of any order or conviction of any of the said police magistrates by the said last-mentioned act; and every magistrate by whom any order or conviction shall have been made shall have the same power of binding over the witnesses who shall have been examined, and such witnesses shall be entitled to the same allowance of expenses as he or they would have had or been entitled to in case the order, conviction and appeal had been made in pursuance of the provisions of the said last-mentioned act.

Receiver of the metropolitan police district to receive penalties incurred within his district.

2 & 3 Vict. c. 71.

(False Evidence.)

[149. And be it enacted, that any person who upon any examination upon oath under the provisions of this or the special act, or any act incorporated therewith, shall wilfully and corruptly give false evidence, shall be liable to the penalties of wilful and corrupt perjury (k).]

Persons giving false evidence liable to penalties of perjury.

(h) Repealed as to England by Summary Jurisdiction Act, 1884, s. 4. See note (c), p. 431.

(i) Repealed by S. L. R. Act, 1891.

(k) Repealed by s. 17 and Schedule of the Perjury Act, 1911 (1 & 2 Geo. 5, c. 6) and replaced by s. 1 of that Act.

(Access to Special Act.)

And with respect to the provision to be made for affording access to the special act by all parties interested, be it enacted as follows:

Copies of special act to be kept and deposited, and allowed to be inspected.

150. The company shall, at all times after the expiration of six months after the passing of the special act, keep in their principal office of business a copy of the special act, printed by the printers to her Majesty, or some of them; and where the undertaking shall be a railway, canal or other like undertaking, the works of which shall not be confined to one town or place, shall also within the space of such six months deposit in the office of each of the clerks of the peace of the several counties into which the works shall extend a copy of such special act so printed as aforesaid; and the said clerks of the peace shall receive, and they and the company respectively shall retain, the said copies of the special act, and shall permit all persons interested to inspect the same, and make extracts or copies therefrom, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of certain plans and sections by an act passed in the first year of the reign of her present Majesty, intituled "An Act to compel Clerks of the Peace for counties and other Persons to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament."

7 Will. 4 &
1 Vict. c. 83.

Penalty on company failing to keep or deposit such copies.

151. If the company shall fail to keep or deposit, as hereinbefore mentioned, any of the said copies of the special act, they shall forfeit twenty pounds for every such offence, and also five pounds for every day afterwards during which such copy shall be not so kept or deposited.

(Extent.)

Act not to extend to Scotland.

152. And be it enacted, that this act shall not extend to Scotland.

Act may be amended this session.

[153. *And be it enacted, that this act may be amended or repealed by any act to be passed in the present session of parliament (l.).*]

SCHEDULES referred to in the foregoing Act.

SCHEDULE A. (m).

Form of Conveyance.

I , of , in consideration of the sum of paid to me [or, as the case may be, into the Bank of England [or Bank of Ireland], in the name and with the privy of the accountant-general of the Court of Chancery, *ex parte* "The Promoters of the Undertaking" [naming them], or to A. B. of and C. D. of , two trustees appointed to receive the same], pursuant to the [here name the special act], by the [here name the company or other promoters of the undertaking], incorporated [or constituted] by the said act, do hereby convey to the said company [or other description], their successors and assigns, all [describing the premises to be conveyed], together with all ways, rights, and appurtenances thereto belonging, and all such estate, right, title and interest in

(l) Repealed by S. L. R. Act, 1875. Cf. Interpretation Act, 1889, s. 10.

(m) To sect. 81.

and to the same as I am or shall become seised or possessed of, or am by the said act empowered to convey, to hold the premises to the said company [*or other description*], their successors and assigns, for ever, according to the true intent and meaning of the said act. In witness whereof I have hereunto set my hand and seal, the day of , in the year of our Lord .

SCHEDULE B. (m).

Form of Conveyance on Chief Rent.

I , of , in consideration of the rent-charge to be paid to me, my heirs and assigns, as hereinafter mentioned, by "The Promoters of the Undertaking" [*naming them*], incorporated [*or constituted*] by virtue of the [*here name the special act*], do hereby convey to the said company [*or other description*], their successors and assigns, all [*describing the premises to be conveyed*], together with all ways, rights, and appurtenances thereunto belonging, and all my estate, right, title and interest in and to the same and every part thereof, to hold the said premises to the said company [*or other description*], their successors and assigns, for ever, according to the true intent and meaning of the said act, they the said company [*or other description*], their successors and assigns, yielding and paying unto me, my heirs and assigns, one clear yearly rent of by equal quarterly [*or half-yearly, as agreed upon*], portions henceforth, on the [*stating the days*], clear of all taxes and deductions. In witness whereof I hereunto set my hand and seal, the day of , in the year of our Lord .

[SCHEDULE C. (n).

Form of Conviction.

to wit.

Be it remembered, that on the day of , in the year of our Lord , A. B. is convicted before us C., D., two of her Majesty's justices of the peace for the county of [*here describe the offence generally, and the time and place when and where committed*], contrary to the [*here name the special act*]. Given under our hands and seals, the day and year first above written. C.
D.]

THE LANDS CLAUSES CONSOLIDATION ACTS AMENDMENT ACT, 1860.

23 & 24 VICT. c. 106.

An Act to amend the Lands Clauses Consolidation Acts (1845) in regard to Sales and Compensation for Land by way of a Rent-charge, Annual Feu-Duty or Ground Annual, and to enable Her Majesty's Principal Secretary of State for the War Department to avail himself of the Powers and Provisions contained in the same Acts. [20th August, 1860.]

[Whereas it is expedient to extend the provisions of the Lands Clauses Consolidation Act, 1845, in regard to sales of land, or compensation for damages, in consideration of an annual rentcharge, annual feu duty or ground annual, and to enable her Majesty's principal secretary of state for the war department to avail himself of the 8 & 9 Vict. c. 18.]

(m) To sect. 81.

(n) To sect. 144. Repealed by Summary Jurisdiction Act, 1884, s. 4; see note (c), p. 431; and by S. L. R. Act, 1892.

powers and provisions contained in the same act for the purchase of lands wanted for the service of the war department or for the defence of the realm: Be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows (o):]

*Part of sect.
10 of recited
act repealed.*

[1. So much of the tenth section of the *Lands Clauses Consolidation Act, 1845*, as provides that, save in the case of lands of which any person is seised in fee or entitled to dispose absolutely for their own benefit, the consideration to be paid for any lands, or for any damage done thereto, shall be in a gross sum, is hereby repealed (p).]

Sects. 10 and 11 of recited act as to power to sell, &c. lands for an annual rentcharge and to recover, extended to all sales, &c. where parties are under disability.

Similar proviso with regard to lands sold under sect. 10 of 8 & 9 Vict. c. 19.

Amount of rentcharge to be settled in manner directed in the 9th section of recited acts.

2. The power to sell and convey lands in consideration of an annual rentcharge provided by the tenth section of the said act, and the power to recover such rentcharge provided by the eleventh section of the said act, are hereby extended to all cases of sale and purchase or compensation under the said act where the parties interested in such sale or entitled to such compensation are under any disability or incapacity, and have no power to sell or convey such lands, or to receive such compensation, except under the provisions of the said act.

3. The power to sell and convey lands in consideration of an annual feu duty or ground annual under the tenth section of the *Lands Clauses Consolidation (Scotland) Act, 1845*, and the power to recover such annual feu duty or ground annual, are hereby extended to all cases of sale or purchase or compensation under the said act, where the parties interested in such sale are under any disability or incapacity, and have no power to sell or convey such lands, or to receive such compensation, except under the provisions of the said act.

4. In every case of such sale or compensation by any parties other than parties seised in fee or entitled to dispose absolutely of the lands so sold or damaged, the amount of such rentcharge, annual feu duty or ground annual, hereinbefore mentioned, shall be settled in the manner directed in the ninth section of each of the said acts respectively: provided, that the amount of such annual rentcharge, annual feu duty or ground annual, shall in no case be less than one-fourth part greater than the net annual rent received by the parties beneficially interested in such lands upon an average of the last seven years; and that a charge of five per cent. on the gross sum estimated or fixed as aforesaid, by way of compensation for any damage that may be done to the said lands, shall in all such cases be added to and shall form a part of the said rentcharge, annual feu duty or ground annual; and that no fine, foregift, grassum, premium, or other consideration in the nature thereof, shall be paid or taken in respect of the lands so sold or damaged, other than the annual rentcharge, annual feu duty or ground annual made payable for such lands: provided also, that such rentcharge shall be and remain upon and for the same uses, trusts, and purposes as those upon which the rents and profits of the land so conveyed stood settled or assured at or immediately before the conveyance thereof, and shall be a first charge on the tolls and rates, if any, payable under the special act.

(o) Repealed by S. L. R. Act, 1892.

(p) Repealed by S. L. R. Act, 1875.

5. In case the promoters of the undertaking shall be empowered, by any act or acts relating thereto, to be passed after the passing of this act, to borrow money to an amount not exceeding a prescribed sum, then in the event of the promoters of the undertaking agreeing at any time after the passing of this act with any person under the powers of this act and of either of the acts hereinbefore mentioned, or of either of the said acts, only for the purchase of any lands in consideration of the payment of a rentcharge, annual feu duty or ground annual, the powers of the promoters of the undertaking for borrowing money shall be reduced by an amount equal to twenty years' purchase of any rentcharge, annual feu duty or ground annual, so for the time being payable.

If lands purchased by way of rentcharge, borrowing powers to be reduced proportionally.

[6. *The clauses contained in "The Lands Clauses Consolidation Act (1845)," relating to the purchase of lands by agreement, and to agreements for sale, and conveyances, sales, and releases of any lands or hereditaments, or any estate or interest therein, by parties under disability, shall extend and be applicable to all purchases of land and hereditaments for public purposes which shall be hereafter made by the council of any city or borough, with the sanction of the commissioners of her Majesty's treasury, under the powers for that purpose contained in "The Municipal Corporation Mortgages, &c. Act (1860)" (q).]*

Certain clauses in 8 & 9 Vict. c. 18, extended to purchases of land, &c. for public purposes.

7. For the purchase or acquisition of any messuages, lands, tenements, and hereditaments wanted for the service of the admiralty or of the war department or for the defence of the realm, it shall be lawful for her Majesty's principal secretary of state for the war department for the time being to use all or any of the powers and provisions by the Lands Clauses Consolidation Act, 1845, and by the Lands Clauses Consolidation (Scotland) Act, 1845, given to promoters of the undertaking, as therein mentioned, and for such purposes the said principal secretary shall be deemed and taken to be the promoters of an undertaking within the meaning of the said act, and all the powers and provisions thereof shall, if used by her Majesty's principal secretary of state for the war department, be treated as if they were contained in the fifth and sixth Victoria, chapter ninety-four, for the purpose of being used and made available by the principal officers of her Majesty's ordnance, and had been transferred to the said principal secretary for the time being by the eighteenth and nineteenth Victoria, chapter one hundred and seventeen, for the purposes aforesaid: pro-

Power to secretary for war to use the powers given to promoters of undertakings by 8 & 9 Vict. c. 18.

(q) Repealed generally as to England by S. L. R. Act, 1892. Repealed as to boroughs within the Municipal Corporations Act, 1882, by sect. 5 of that Act, sect. 107 of which substitutes the following provisions: "(1) Where a municipal corporation has not power to purchase or acquire land, or to hold land in mortmain, the council may, with the approval of the treasury, purchase or acquire any land in such manner and on such terms and conditions as the treasury approve, and the same may be conveyed to and held by the corporation accordingly. (2) The provisions of the Lands Clauses Consolidation Acts, 1845, 1860 and 1869, relating to the purchase of land by agreement, and to agreements for sale, and conveyances, sales, and releases of any lands or hereditaments, or any estate or interest therein by persons under disability, shall extend to all purchasers of land under this section." Sect. 72 of the Local Government Act, 1888, substitutes the Local Government Board for the Treasury.

vided always, that nothing herein contained shall authorize any purchase otherwise than by agreement of any land, except according to the provisions of the twenty-third section of the said act of the fifth and sixth Victoria, or prejudice or affect the powers and authorities of the said principal secretary for the time being under the said last-mentioned statutes or either of them.

This act and
8 & 9 Vict.
cc. 18 & 19,
to be con-
strued
together.

8. This act shall be read and construed as part of the said Lands Clauses Consolidation Act, 1845, or of the Lands Clauses Consolidation (Scotland) Act, 1845, in all matters in which it relates to the said acts respectively; and in citing this act in other acts of parliament, and in legal instruments, it shall be sufficient to use the expression of "The Lands Clauses Consolidation Acts Amendment Act, 1860."

THE LANDS CLAUSES CONSOLIDATION ACT, 1869.

32 & 33 VICT. c. 18.

An Act to amend the Lands Clauses Consolidation Act.

[24th June, 1869.]

[Whereas it is expedient that the provisions contained in "The Lands Clauses Consolidation Act, 1845," should be amended:

Be it therefore enacted and declared by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows (r):]

Costs of arbi-
trations, where
either party so
requires, to be
settled by a
master of
superior courts.

[1. Where in England, under "The Lands Clauses Consolidation Act, 1845," or any act incorporating the same, any question of disputed compensation is determined by arbitration, the costs of and incidental to the arbitration and award shall, if either party so requires, be taxed and settled as between the parties by any one of the taxing masters of the superior courts of law; and such fees may be taken in respect of the taxation as may be fixed in pursuance of the enactments relating to the fees to be demanded and taken in the offices of such masters, and all those enactments including the enactments relating to the taking of fees by means of stamps, shall extend to the fees in respect of the said taxation (s).]

Repeal of
31 & 32 Vict.
c. 119, s. 33.

[2. Section thirty-three of the Regulation of Railways Act, 1868, is hereby repealed, and any proceedings commenced in pursuance of that section may be continued under this act as if they had been commenced under it (t).]

Provision
respecting
lands in
Westminster.

3. Where any lands by the special act authorized to be taken are situate within the city and liberty of Westminster, then, with respect to those lands, in every case in which any question of disputed compensation is required by the Lands Clauses Consolidation Act, 1845, or any act amending the same, to be determined by the verdict

(r) Repealed by S. L. R. (No. 2) Act, 1893.

(s) Repealed by L. Cl. (Taxation of Costs) Act, 1895, s. 2; *q. r. post*, p. 440.

(t) Repealed by S. L. R. Act, 1883.

of a jury, the high bailiff of the city and liberty of Westminster, or his deputy, shall be deemed to be substituted for the sheriff throughout such of the enactments of the Lands Clauses Consolidation Act, 1845, and any act amending the same as relate to the reference to a jury.

4. This act may be cited as "The Lands Clauses Consolidation Act, 1869," and shall be construed as one with the Lands Clauses Consolidation Act, 1845, and the Lands Clauses Consolidation Acts Amendment Act, 1860, and these acts and this act may be cited together as the Lands Clauses Consolidation Acts, 1845, 1860, 1869.

Short title.
Construction
of Acts.

THE LANDS CLAUSES (UMPIRE) ACT, 1883.

46 VICT. c. 15.

An Act to amend the Lands Clauses Consolidation Act, 1845.

[18th June, 1883.]

[Whereas it is expedient that the provisions contained in the Lands Clauses Consolidation Act, 1845, in relation to the appointment of umpires, should be amended:]

Be it therefore enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows (u):]

1. [The following words in] Section twenty-eight of the Lands Clauses Consolidation Act, 1845 [are hereby repealed, that is to say, "in any case in which a railway company shall be one party to the arbitration, and two justices in any other case," and that section shall, in relation to the appointment of any umpire under the provisions thereof after the passing of this act, apply as if such words were omitted, and the same section (u)] shall [accordingly (u)] be read and have effect as follows:

Amendment
of sect. 28 of
8 & 9 Vict.
c. 18, extend-
ing the power
of appoint-
ment of
umpire by
Board of
Trade.

"28. If in either of the cases aforesaid the said arbitrators shall refuse, or shall for seven days after request of either party to such arbitration neglect, to appoint an umpire, the Board of Trade shall, on the application of either party to such arbitration, appoint an umpire, and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special act, shall be final."

2. This act may be cited as the "Lands Clauses (Umpire) Act, 1883."

(u) Repealed by S. L. R. Act, 1898.

THE LANDS CLAUSES (TAXATION OF COSTS)
ACT, 1895 (x).

58 VICT. c. 11.

An Act to amend the Law relating to the Taxation of Costs under the Lands Clauses Acts. [14th May, 1895.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

Fees for
taxing costs
in compensa-
tion inquiries
and arbitra-
tions.

8 & 9 Vict.
c. 18.

1.—(1.) Where under the Lands Clauses Consolidation Act, 1845, or any act incorporating the same, any question of disputed compensation is determined by the verdict of a jury, or by arbitration, the costs of and incidental to the inquiry or to the arbitration and award (as the case may be), shall, if either party so requires, be taxed and settled as between the parties by one of the masters of the Supreme Court, and such fees shall be taken in respect of the taxation as may be fixed in pursuance of the enactments relating to the fees to be taken in the offices of those masters; and all those enactments (including the enactments relating to the taking of fees by means of stamps) shall extend to the fees in respect of such taxation.

31 & 32 Vict.
c. 119.

(2.) Section forty-five of the Regulation of Railways Act, 1868, and section one of the Lands Clauses Consolidation Act, 1869, are hereby repealed.

32 & 33 Vict.
c. 18.

2. This act may be cited as the Lands Clauses (Taxation of Costs) Act, 1895.

Short title.

Section II.—Railways.

THE RAILWAYS CLAUSES CONSOLIDATION ACT,
1845 (y).

8 & 9 VICT. c. 20.

An Act for consolidating in One Act certain Provisions usually inserted in Acts authorizing the making of Railways.

[8th May, 1845.]

[Whereas it is expedient to comprise in one general act sundry provisions usually introduced into acts of parliament authorizing the construction of railways, and that as well for the purpose of avoiding the necessity of repeating such provisions in each of the several acts relating to such undertakings as for ensuring greater uniformity

(x) *Vide ante*, pp. 202, 218.

(y) In the case of the Railway Acts, a certain number of cases dealing with minor points have been inserted as notes to the Acts instead of being incorporated in the text.

in the provisions themselves: and whereas a bill is now pending in parliament, intituled An Act for consolidating in one Act certain provisions usually inserted in Acts authorizing the taking of Lands for Undertakings of a public nature, and which is intended to be called "The Land Clauses Consolidation Act, 1845": may it therefore please your Majesty that it may be enacted; and be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That (z) This act shall apply to every railway which shall by any act which shall hereafter be passed be authorized to be constructed, and this act shall be incorporated with such act; and all the clauses and provisions of this act, save so far as they shall be expressly varied or excepted by any such act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, as well as the clauses and provisions of every other act which shall be incorporated with such act, form part of such act, and be construed together therewith as forming one act.

Operation of this act confined to future railways.

And with respect to the construction of this act and of other acts to be incorporated therewith, be it enacted as follows:

Interpretations in this act:

2. The expression "the special act," used in this act, shall be construed to mean any act which shall be hereafter passed authorizing the construction of a railway, and with which this act shall be so incorporated as aforesaid; and the word "prescribed," used in this act in reference to any matter herein stated, shall be construed to refer to such matter as the same shall be prescribed or provided for in the special act; and the sentence in which such word shall occur shall be construed as if, instead of the word "prescribed," the expression "prescribed for that purpose in the special act" had been used; and the expression "the lands" shall mean the lands which shall by the special act be authorized to be taken or used for the purposes thereof; and the expression "the undertaking" shall mean the railway and works, of whatever description, by the special act authorized to be executed.

"Special act:"

"prescribed:"

"the lands:"

"the undertaking."

* * * * *

AND with respect to the construction of the railway and the works connected therewith, be it enacted as follows:

6. (a) In exercising the power given to the company by the special act to construct the railway, and to take lands for that purpose, the company shall be subject to the provisions and restrictions contained in this act and in the said Lands Clauses Consolidation Act; and the company shall make to the owners and occupiers of and all other parties interested in any lands taken or used for the purposes of the railway, or injuriously affected by the construction thereof, full compensation for the value of the lands so taken or used, and for all damage sustained by such owners, occupiers, and other parties, by reason of the exercise, as regards such lands, of the powers by this or the special act, or any act incorporated therewith, vested in the company; and, except where otherwise provided by this or the special act, the amount of such compensation shall be ascertained and determined in the manner provided by the said Lands Clauses Consolidation Act

The construction of the railway to be subject to the provisions of this act and the Lands Clauses Consolidation Act.

(z) Repealed by S. L. R. Act, 1891.

(a) *Vide ante*, p. 144.

for determining questions of compensation with regard to lands purchased or taken under the provisions thereof; and all the provisions of the said last-mentioned act shall be applicable to determining the amount of any such compensation, and to enforcing the payment or other satisfaction thereof.

* * * * *

Limiting
deviation
from datum
line described
on sections,
&c.

11. In making the railway it shall not be lawful for the company to deviate from the levels of the railway, as referred to the common datum line described in the section approved of by parliament, and as marked on the same, to any extent exceeding in any place five feet, or, in passing through a town (*b*), village, street, or land continuously built upon, two feet, without the previous consent in writing of the owners and occupiers of the land in which such deviation is intended to be made; or in case any street or public highway shall be affected by such deviation, then the same shall not be made without the like consent of the trustees or commissioners having the control of such street or public highway, or, if there be no such trustees or commissioners, without the like consent of two or more justices of the peace in petty sessions assembled for that purpose, and acting for the district in which such street or public highway may be situated, or without the like consent of the commissioners for any public sewers, or the proprietors of any canal, navigation, gas works, or waterworks affected by such deviation: provided always, that it shall be lawful for the company to deviate from the said levels to a further extent without such consent as aforesaid, by lowering solid embankments or viaducts, provided that the requisite height of headway as prescribed by act of parliament be left for roads, streets, or canals passing under the same: provided also, that notice of every petty sessions to be holden for the purpose of obtaining such consent of two justices as is hereinbefore required shall, fourteen days previous to the holding of such petty sessions, be given in some newspaper circulating in the county, and also be affixed upon the door of the parish church in which such deviation or alteration is intended to be made, or, if there be no church, some other place to which notices are usually affixed (*c*).

Proviso.

Proviso.

Public notice
to be given
previous to
making
greater
deviations.

Power to the
owners of
adjoining
lands to
appeal to the
Board of
Trade against
such deviations.

12. Before it shall be lawful for the company to make any greater deviation from the level than five feet, or, in any town, village, street, or land continuously built upon, two feet, after having obtained such consent as aforesaid, it shall be incumbent on the company to give notice of such intended deviation by public advertisement, inserted once at least in two newspapers, or twice at least in one newspaper, circulating in the district or neighbourhood where such deviation is intended to be made, three weeks at least before commencing to make such deviation; and it shall be lawful for the owner of any lands prejudicially affected thereby, at any time before the commencement of the making of such deviation, to apply to the Board of Trade, after giving ten days' notice to the company, to decide whether, having regard to the interests of such applicants, such proposed deviation is proper to be made; and it shall be lawful for the Board of Trade, if they think fit, to decide such question accordingly, and by their certificate in writing either to disallow the making of such deviation or to

(*b*) Cf. L. Cl. Act, 1845, ss. 93, 128, and *vide ante*, pp. 44, 312.

(*c*) See the Railways Clauses Act, 1863, s. 4.

authorize the making thereof, either simply or with any such modification as shall seem proper to the Board of Trade; and after any such certificate shall have been given by the Board of Trade it shall not be lawful for the company to make such deviation, except in conformity with such certificate.

13. Where in any place it is intended to carry the railway on an arch or arches or other viaduct, as marked on the said plan or section, the same shall be made accordingly; and where a tunnel is marked on the said plan or section as intended to be made at any place, the same shall be made accordingly, unless the owners, lessees, and occupiers of the land in which such tunnel is intended to be made shall consent that the same shall not be so made (*d*).

Arches, tunnels, &c. to be made as marked on deposited plans.

14. It shall not be lawful for the company to deviate from or alter the gradients, curves, tunnels, or other engineering works described in the said plan or section, except within the following limits, and under the following conditions; (that is to say,)

Limiting deviations from gradients, curves, &c.

Subject to the above provisions in regard to altering levels, it shall be lawful for the company to diminish the inclination or gradients of the railway to any extent, and to increase the said inclination or gradients as follows; (that is to say,) in gradients of an inclination not exceeding one in a hundred, to any extent not exceeding ten feet per mile, or to any further extent which shall be certified by the Board of Trade to be consistent with the public safety, and not prejudicial to the public interest; and in gradients of or exceeding the inclination of one in a hundred, to any extent not exceeding three feet per mile, or to any further extent which shall be so certified by the Board of Trade as aforesaid:

It shall be lawful for the company to diminish the radius of any curve described in the said plan to any extent which shall leave a radius of not less than half a mile, or to any further extent authorized by such certificate as aforesaid from the Board of Trade:

It shall be lawful for the company to make a tunnel, not marked on the said plan or section, instead of a cutting, or a viaduct instead of a solid embankment, if authorized by such certificate as aforesaid from the Board of Trade (*e*).

15. It shall be lawful for the company to deviate from the line delineated on the plans so deposited, provided that no such deviation shall extend to a greater distance than the limits of deviation delineated upon the said plans, nor to a greater extent in passing through a town, village, or lands continuously built upon than ten yards, or elsewhere to a greater extent than one hundred yards from the said line, and that the railway by means of such deviation be not made to extend into the lands of any person, whether owner, lessee, or occupier, whose name is not mentioned in the books of reference, without the previous consent in writing of such person, unless the name of such person shall have been omitted by mistake, and the fact that such omission proceeded from mistake shall have been certified in manner

Lateral deviations.

(*d*) See the Railways Clauses Act, 1863, s. 4.

(*e*) *Beardmer v. L. & N. W. Rail. Co.* (1849), 1 Macn. & G. 112; *R. v. Caledonian Rail. Co.* (1851), 16 Q. B. 19; *Att.-Gen. v. Tewkesbury & Malvern Rail. Co.* (1863), 32 L. J. Ch. 482.

herein or in the special act provided for in cases of unintentional errors in the said books of reference.

Works to be executed.

16. (f) Subject to the provisions and restrictions in this and the special act, and any act incorporated therewith, it shall be lawful for the company, for the purpose of constructing the railway, or the accommodation works connected therewith, hereinafter mentioned, to execute any of the following works; (that is to say,)

Inclined planes, &c.

They may make or construct, in, upon, across, under, or over any lands, or any streets, hills, valleys, roads, railroads, or tramroads, rivers (g), canals, brooks, streams, or other waters, within the lands described in the said plans, or mentioned in the said books of reference or any correction thereof, such temporary (h) or permanent inclined planes (i), tunnels, embankments, aqueducts, bridges, roads, ways, passages, conduits, drains, piers, arches, cuttings, and fences as they think proper;

Alteration of course of rivers, &c.

They may alter the course of any rivers not navigable, brooks, streams, or watercourses, and of any branches of navigable rivers, such branches not being themselves navigable, within such lands, for the purpose of constructing and maintaining tunnels, bridges, passages, or other works over or under the same, and divert or alter, as well temporarily as permanently (k), the course of any such rivers or streams of water, roads, streets, or ways, or raise or sink the level of any such rivers or streams, roads (l), streets, or ways, in order the more conveniently to carry the same over or under or by the side of the railway, as they may think proper;

Drains, &c.

They may make drains or conduits into, through, or under any lands adjoining the railway, for the purpose of conveying water from or to the railway;

Warehouses, &c.

They may erect and construct such houses, warehouses, offices, and other buildings, yards, stations, wharfs, engines, machinery, apparatus, and other works and conveniences as they think proper;

Alterations and repairs.

They may from time to time alter, repair, or discontinue the before-mentioned works or any of them, and substitute others in their stead; and

General power.

They may do all other acts necessary for making, maintaining, altering, or repairing, and using the railway:

Proviso as to damages.

Provided (m) always, that in the exercise of the powers by this or the special act granted the company shall do as little damage as can be, and shall make full satisfaction in manner herein and in the special act, and any act incorporated therewith, provided, to all parties

(f) *Vide ante*, p. 145.

(g) *Abraham v. G. N. Rail. Co.* (1851), 16 Q. B. 256.

(h) *Priestley v. Manchester & Leeds Rail. Co.* (1840), 2 Rail. Cas. 134.

(i) *West Lancashire R. D. C. v. L. & Y. Rail. Co.*, [1903] 2 K. B. 394.

(k) *Phillips v. L. B. & S. C. Rail. Co.* (1862), 4 Giff. 46.

(l) *Marquis of Salisbury v. G. N. Rail. Co.* (1858), 28 L. J., C. P. 40; *L. & N. W. Rail. Co. v. Ogwen U. D. C.* (1899), 80 L. T. 401,

(m) *R. v. E. & W. India Docks & Birmingham Junction Rail. Co.* (1853), 22 L. J. Q. B. 380; *Fenwick v. East London Rail. Co.* (1875), L. R. 20 Eq. 544.

interested, for all damage by them sustained by reason of the exercise of such powers.

* * * * *

And with respect to the temporary occupation of lands near the railway during the construction thereof, be it enacted as follows:

30. Subject to the provisions herein and in the special act contained, it shall be lawful for the company, at any time before the expiration of the period by the special act limited for the completion of the railway, to enter upon and use any existing private road, being a road gravelled or formed with stones or other hard materials, and not being an avenue or a planted or ornamental road, or an approach to any mansion house, within the prescribed limits, if any, or, if no limits be prescribed, not being more than five hundred yards distant from the centre of the railway as delineated on the plans; but before the company shall enter upon or use any such existing road they shall give three weeks' notice of their intention to the owners and occupiers of such road, and of the lands over which the same shall pass, and shall in such notice state the time during which, and the purposes for which, they intend to occupy such road, and shall pay to the owners and occupiers of such road, and of the lands through which the same shall pass, such compensation for the use and occupation of such road, either in a gross sum of money or by half-yearly instalments, as shall be agreed upon between such owners and occupiers respectively and the company, or in case they differ about the compensation the same shall be settled by two justices, in the same manner as any compensation not exceeding fifty pounds is directed to be settled by the said Lands Clauses Consolidation Act.

Company may occupy temporarily private roads within five hundred yards of the railway.

31. It shall be lawful for the owners and occupiers of any such road, and of the lands over which the same passes, within ten days after the service of the aforesaid notice, by notice in writing to the company to object to the company making use of such road, on the ground that other roads such as the company are hereinbefore authorized to use for the purposes aforesaid, or that some public road would be more fitting to be used for the same; and upon the objection being so made such proceedings may be had as are hereinafter mentioned with respect to lands temporarily occupied by the company, in respect of which three weeks' notice is hereinafter required to be given, and in the same manner as if in the provisions relative to such proceedings the word road or roads, or the words road and the land over which the same passes, as the case may require, had been substituted in such provisions for the word lands.

Power to owners and occupiers of road and land to object that other roads should be taken.

32. Subject to the provisions herein and in the special act contained, it shall be lawful for the company, at any time before the expiration of the period by the special act limited for the completion of the railway, without making any previous payment, tender, or deposit, to enter upon any lands within the prescribed limits, or, if no limits be prescribed, not being more than two hundred yards distant from the centre of the railway as delineated on the plans, and not being a garden, orchard, or plantation attached or belonging to a house, nor a park, planted walk, avenue, or ground ornamentally planted, and not being nearer to the mansion house of the owner of any such lands than the prescribed distance, or if no distance be prescribed, then not nearer than five hundred yards therefrom, and to occupy the said lands

Power to take temporary possession of land without previous payment of price.

so long as may be necessary for the construction or repair of that portion of the railway, or of the accommodation works connected therewith, hereinafter mentioned, and to use the same for any of the following purposes; (that is to say,)

For the purpose of taking earth or soil by side cuttings therefrom;

For the purpose of depositing spoil thereon;

For the purpose of obtaining materials therefrom for the construction or repair of the railway or such accommodation works as aforesaid; or

For the purpose of forming roads thereon to or from or by the side of the railway:

And in exercise of the powers aforesaid it shall be lawful for the company to deposit and also to manufacture and work upon such lands materials of every kind used in constructing the railway, and also to dig and take from out of any such lands any clay, stone, gravel, sand, or other things that may be found therein useful or proper for constructing the railway or any such roads as aforesaid, and for the purposes aforesaid to erect thereon workshops, sheds, and other buildings of a temporary nature: provided always, that nothing in this act contained shall exempt the company from an action for nuisance or other injury, if any done, in the exercise of the powers hereinbefore given, to the lands or habitations of any party other than the party whose lands shall be so taken or used for any of the purposes aforesaid: provided also, that no stone or slate quarry, brick field, or other like place, which at the time of the passing of the special act shall be commonly worked or used for getting materials therefrom for the purpose of selling or disposing of the same, shall be taken or used by the company, either wholly or in part, for any of the purposes lastly hereinbefore mentioned.

Company to give notice previous to such temporary possession.

33. In case any such lands shall be required for spoil banks or for side cuttings, or for obtaining materials for the construction or repair of the railway, the company shall before entering thereon (except in the case of accident to the railway requiring immediate reparation) give three weeks' notice in writing to the owners and occupiers of such lands of their intention to enter upon the same for such purposes; and in case the said lands are required for any of the other purposes hereinbefore mentioned the company shall (except in the cases aforesaid) give ten days' like notice thereof, and the company shall in such notices respectively state the substance of the provisions hereinafter contained respecting the right of such owner or occupier to require the company to purchase any such lands, or to receive compensation for the temporary occupation thereof, as the case may be.

Service of notices on owners and occupiers of lands.

34. The said notice shall either be served personally on such owners and occupiers, or left at their last usual place of abode, if any such can, after diligent inquiry, be found, and in case any such owner shall be absent from the United Kingdom, or cannot be found after diligent inquiry, shall also be left with the occupier of such lands, or, if there be no such occupier, shall be affixed upon some conspicuous part of such lands.

Power to owner to object that

35. In any case in which a notice of three weeks is hereinbefore required to be given it shall be lawful for the owner or occupier of the lands therein referred to, within ten days after the service of such

notice, by notice in writing to the company to object to the company making use of such lands, either on the ground that the lands proposed to be taken for the purposes aforesaid, or some part thereof, or of the materials contained therein, are essential to be retained by such owner, in order to the beneficial enjoyment of other neighbouring lands belonging to him, or on the ground that other lands lying contiguous or near to those proposed to be taken would be more fitting to be used for such purposes by the company; and upon objection being so made such proceedings may be had as hereinafter mentioned.

36. If the objection so made be on the ground that the lands proposed to be taken, or some part thereof, or of the materials contained therein, are essential to be retained by the owner in order to the beneficial enjoyment of other neighbouring lands belonging to him, it shall be lawful for any justice, on the application of such owner, to summon the company to appear before two justices at a time and place to be named in the summons, such time not being later than the expiration of the said twenty-one days' notice; and on the appearance of the company, or, in their absence, upon proof of due service of the summons, it shall be lawful for such justices to inquire into the truth of such ground of objection; and if it appear to such justices that for some special reason, to be stated in the order after mentioned, the lands so proposed to be taken, or any part thereof, or of the materials contained therein, are essential to be retained by the owner of such lands in order to the beneficial enjoyment of other neighbouring lands belonging to him, and ought not therefore to be taken or used by the company, it shall be lawful for such justices, by writing under their hands, to order that the lands so proposed to be taken, or some part thereof, or of the materials contained therein, to be specified in such order, shall not be taken or used by the company, and after service of such order on the company it shall not be lawful for them to take or use, without the previous consent in writing of the owner thereof, any of the lands or materials which by such order they are ordered not to take or use.

other lands ought to be taken.

Power to two justices to order that the lands and materials shall not be taken.

37. If the objection so made as aforesaid be on the ground that other lands lying contiguous to those proposed to be taken, and being sufficient in quantity, and such as the company are hereinbefore authorized to use for the purposes aforesaid, would be more fitting to be used by the company, and if in such case the company shall refuse to occupy such other lands in lieu of those mentioned in the notice, it shall be lawful for any justice, on the application of such owner or occupier, to summon the company and the owners and occupiers of such other lands to appear before two justices at a time and place to be named in such summons, such time not being more than fourteen days after such application nor less than seven days from the service of such summons; and on the appearance of the parties, or, in the absence of any of them, upon proof of due service of the summons, it shall be lawful for such justices to determine summarily which of the said lands shall be used by the company for the purposes aforesaid, and to authorize the company to occupy and use the same accordingly.

Power to justices to order other lands to be taken.

38. If in the case last mentioned it shall appear to such justices, upon the inquiry before them, that the lands of any other party not summoned before them, being sufficient in quantity, and such as the company are hereinbefore authorized to take or use for the

Power to the justices to summon other owners before them.

purposes aforesaid, would be more fitting to be used by the company than the lands of the person who shall have been so summoned as aforesaid, it shall be lawful for the said justices to adjourn such inquiry, and to summon such other person to appear before them at any time, not being more than fourteen days from such inquiry nor less than seven days from the service of such summons; and on the appearance of the parties, or, in the absence of any of them, on proof of due service of the summons, it shall be lawful for such justices to determine finally which lands shall be used for the purposes aforesaid, and to authorize the company to occupy and use the same accordingly.

The company to give sureties, if required.

39. Before entering, under the provisions hereinbefore contained, upon any such lands as shall be required for spoil banks or for side cuttings, or for obtaining materials or forming roads as aforesaid, the company shall, if required by the owner or occupier thereof, seven days at least before the expiration of the notice to take such lands as hereinbefore mentioned, find two sufficient persons, to be approved of by a justice, in case the parties differ, who shall enter into a bond to such owner or occupier in a penalty of such amount as shall be approved of by such justice, in case the parties differ, conditioned for the payment of such compensation as may become payable in respect of the same in manner herein mentioned.

Company to separate the lands before using them.

40. Before the company shall use any such lands for any of the purposes aforesaid they shall, if required so to do by the owner or occupier thereof, separate the same by a sufficient fence from the lands adjoining thereto, with such gates as may be required by the said owner or occupier for the convenient occupation of such lands, and shall also, to all private roads used by them as aforesaid, put up fences and gates in like manner, in all cases where the same may be necessary to prevent the straying of cattle from or upon the lands traversed by such roads, and in case of any difference between the owners or occupiers of such roads and lands and the company as to the necessity for such fences and gates, such fences and gates as any two magistrates shall deem necessary for the purposes aforesaid, on application being made to them in like manner as hereinbefore is provided in respect to the use of such roads.

Lands taken for getting materials, &c. to be worked as the surveyor or owner may direct.

41. If any land shall be taken or used by the company, under the provisions of this or the special act, for the purpose of getting materials therefrom for the construction or repair of the railway, or the accommodation works connected therewith, they shall work the same in such manner as the surveyor or agent of the owner of such land shall direct, or, in case of disagreement between such surveyor or agent and the company, in such manner as any justice shall direct, on the application of either party, after notice of the hearing the application shall have been given to the other party.

Owners of lands may compel company to purchase lands so temporarily occupied.

42. In all cases in which the company shall in exercise of the powers aforesaid enter upon any lands for the purpose of making spoil banks or side cuttings thereon, or for obtaining therefrom materials for the construction or repair of the railway, it shall be lawful for the owners or occupiers of such lands, or parties having such estates or interests therein as, under the provisions in the said Lands Clauses Consolidation Act mentioned, would enable them to sell or convey lands to the company, at any time during the possession of any such lands by the company, and before such owners

or occupiers shall have accepted compensation from the company in respect of such temporary occupation, to serve a notice in writing on the company requiring them to purchase the said lands, or the estates and interests therein capable of being sold and conveyed by them respectively; and in such notice such owners or occupiers shall set forth the particulars of such their estate or interest in such lands, and the amount of their claim in respect thereof; and the company shall thereupon be bound to purchase the said lands, or the estate and interest therein capable of being sold and conveyed by the parties serving such notice.

43. In any of the cases aforesaid, where the company shall not be required to purchase such lands, and in all other cases where they shall take temporary possession of lands by virtue of the powers herein or in the special act granted, it shall be incumbent on the company, within one month after their entry upon such lands, upon being required so to do, to pay to the occupier of the said lands the value of any crop or dressing that may be thereon, as well as full compensation for any other damage of a temporary nature which he may sustain by reason of their so taking possession of his lands, and shall also from time to time during their occupation of the said lands pay half-yearly to such occupier or to the owner of the lands, as the case may require, a rent to be fixed by two justices, in case the parties differ, and shall also within six months after they shall have ceased to occupy the said lands, and not later than six months after the expiration of the time by the special act limited for the completion of the railway, pay to such owner and occupier, or deposit in the bank for the benefit of all parties interested, as the case may require, compensation for all permanent or other loss, damage, or injury that may have been sustained by them by reason of the exercise, as regards the said lands, of the powers herein or in the special act granted, including the full value of all clay, stone, gravel, sand, and other things taken from such lands.

Compensation to be made for temporary occupation.

44. The amount and application of the purchase money and other compensation payable by the company in any of the cases aforesaid shall be determined in the manner provided by the said Lands Clauses Consolidation Act for determining the amount and application of the compensation to be paid for lands taken under the provisions thereof.

Compensation to be ascertained under the Lands Clauses Act.

45. And be it enacted, that it shall be lawful for the company, in addition to the lands authorized to be compulsorily taken by them under the powers of this or the special act, to contract with any party willing to sell the same for the purchase of any land adjoining or near to the railway, not exceeding in the whole the prescribed number of acres for extraordinary purposes; (that is to say,)

Land to be taken for additional stations, &c.

For the purpose of making and providing additional stations, yards, wharfs, and places for the accommodation of passengers, and for receiving, depositing, and loading or unloading goods or cattle to be conveyed upon the railway, and for the erection of weighing machines, toll houses, offices, warehouses, and other buildings and conveniences:

For the purpose of making convenient roads, or ways to the railway, or any other purpose which may be requisite or convenient for the formation or use of the railway.

* * * * *

And with respect to works for the accommodation of lands adjoining the railway, be it enacted as follows:

68. The company shall make and at all times thereafter maintain the following works (*n*) for the accommodation of the owners and occupiers of lands adjoining the railway; (that is to say.)

Gates,
bridges, &c.

Such and so many convenient gates, bridges, arches, culverts, and passages (*o*) over, under, or by the sides of or leading to or from the railway as shall be necessary for the purpose of making good any interruptions caused by the railway to the use of the lands through which the railway shall be made; and such works shall be made forthwith after the part of the railway passing over such lands shall have been laid out or formed, or during the formation thereof:

Fences:

Also sufficient posts, rails, hedges, ditches, mounds, or other fences (*p*) for separating the land taken for the use of the railway from the adjoining lands not taken, and protecting such lands from trespass, or the cattle of the owners or occupiers thereof from straying thereout, by reason of the railway, together with all necessary gates made to open towards such adjoining lands, and not towards the railway, and all necessary stiles: and such posts, rails, and other fences shall be made forthwith after the taking of any such lands, if the owners thereof shall so require, and the said other works as soon as conveniently may be:

Drains:

Also all necessary arches, tunnels, culverts, drains (*q*), or other passages, either over or under or by the sides of the railway, of such dimensions as will be sufficient at all times to convey the water as clearly from the lands lying near or affected by the railway as before the making of the railway, or as nearly so as may be; and such works shall be made from time to time as the railway works proceed:

Watering
places.

Also proper watering places for cattle where by reason of the railway the cattle of any person occupying any lands lying near thereto shall be deprived of access to their former watering places: and such watering places shall be so made as to be at all times as sufficiently supplied with water as theretofore, and

(*n*) *R. v. Fisher* (1862), 32 L. J. M. C. 12.

(*o*) *United Land Co. v. G. E. Rail. Co.* (1875), L. R. 10 Ch. 586; *Finch v. G. W. Rail. Co.* (1879), 5 Ex. D. 254; *G. N. Rail. Co. v. McAlister*, [1897] 1 Ir. R. 587; *G. W. Rail. Co. v. Talbot*, [1902] 2 Ch. 759.

(*p*) *Ricketts v. E. & W. India Docks Co. & Birmingham Junction Rail. Co.* (1852), 12 C. B. 160; *Dawson v. Midland Rail. Co.* (1872), L. R. 8 Ex. 8; *Buxton v. N. E. Rail. Co.* (1868), L. R. 3 Q. B. 549; *Dixon v. G. W. Rail. Co.*, [1897] 1 Q. B. 300.

(*q*) *L. & N. W. Rail. Co. v. Runcorn R. D. Co.*, [1898] 1 Ch. 34.

as if the railway had not been made, or as nearly so as may be; and the company shall make all necessary watercourses and drains for the purpose of conveying water to the said watering places:

Provided always, that the company shall not be required to make such accommodation works in such a manner as would prevent or obstruct the working or using of the railway, nor to make any accommodation works with respect to which the owners and occupiers of the lands shall have agreed to receive and shall have been paid compensation instead of the making them.

69. If any difference arise respecting the kind or number of any such accommodation works, or the dimensions or sufficiency thereof, or respecting the maintaining thereof, the same shall be determined by two justices; and such justices shall also appoint the time within which such works shall be commenced and executed by the company (r).

Differences as to accommodation works to be settled by justices.

70. If for fourteen days next after the time appointed by such justices for the commencement of any such works the company shall fail to commence such works, or having commenced shall fail to proceed diligently to execute the same in a sufficient manner, it shall be lawful for the party aggrieved by such failure himself to execute such works or repairs; and the reasonable expenses thereof shall be repaid by the company to the party by whom the same shall so have been executed; and if there be any dispute about such expenses the same shall be settled by two justices; provided always, that no such owner or occupier or other person shall obstruct or injure the railway, or any of the works connected therewith, for a longer time nor use them in any other manner than is unavoidably necessary for the execution or repair of such accommodation works.

Execution of works by owners on default by the company.

71. If any of the owners or occupiers of lands affected by such railway shall consider the accommodation works made by the company, or directed by such justices to be made by the company, insufficient for the commodious use of their respective lands, it shall be lawful for any such owner or occupier, at any time, at his own expense, to make such further works for that purpose as he shall think necessary, and as shall be agreed to by the company, or, in case of difference, as shall be authorized by two justices.

Power to owners of land to make additional accommodation works.

72. If the company so desire, all such last-mentioned accommodation works shall be constructed under the superintendence of their engineer, and according to plans and specifications to be submitted to and approved by such engineer; nevertheless the company shall not be entitled to require, either that plans should be adopted which would involve a greater expense than that incurred in the execution of similar works by the company, or that the plans selected should be executed in a more expensive manner than that adopted in similar cases by the company.

Such works to be constructed under the superintendence of the company's engineer.

(r) *Hood v. N. E. Rail. Co.* (1870), L. R. 11 Eq. 116; *R. v. Waterford & Limerick Rail. Co.* (1852), 2 Ir. C. L. 580; *R. v. Brown* (1867), L. R. 2 Q. B. 630; *R. v. Fisher* (1862), 32 L. J. M. C. 12.

Accommodation works not to be required after five years.

Owners to be allowed to cross until accommodation works are made.

73. The company shall not be compelled to make any further or additional accommodation works for the use of owners and occupiers of land adjoining the railway after the expiration of the prescribed period, or, if no period be prescribed, after five years from the completion of the works, and the opening of the railway for public use (s).

74. Until the company shall have made the bridges or other proper communications which they shall under the provisions herein, or in the special act, or any act incorporated therewith, contained, have been required to make between lands intersected by the railway, and no longer, the owners and occupiers of such lands, and any other persons whose right of way shall be affected by the want of such communication, and their respective servants, may at all times freely pass and repass, with carriages, horses and other animals, directly (but not otherwise) across the part of the railway made in or through their respective lands, solely for the purpose of occupying the same lands, or for the exercise of such right of way, and so as not to obstruct the passage along the railway, or to damage the same; nevertheless, if the owner or occupier of any such lands have in his arrangements (t) with the company received or agreed to receive compensation for or on account of any such communications, instead of the same being formed, such owner or occupier, or those claiming under him, shall not be entitled so to cross the railway.

* * * * *

And with respect to mines lying under or near the railway, be it enacted as follows (u):

Company not to be entitled to minerals.

77. The company shall not be entitled to any mines of coal, ironstone, slate, or other minerals under any land purchased by them, except only such parts thereof as shall be necessary to be dug or carried away or used in the construction of the works, unless the same shall have been expressly purchased; and all such mines, excepting as aforesaid, shall be deemed to be excepted out of the conveyance of such lands, unless they shall have been expressly named therein and conveyed thereby.

Mines lying near the railway not to be worked if the company willing to purchase them.

78. If the owner, lessee, or occupier of any mines or minerals lying under the railway, or any of the works connected therewith, or within the prescribed distance, or, where no distance shall be prescribed, forty yards therefrom, be desirous of working the same, such owner, lessee, or occupier shall give to the company notice in writing of his intention so to do thirty days before the commencement of working; and upon the receipt of such notice it shall be lawful for the company to cause such mines to be inspected by any person appointed by them for the purpose; and if it appear to the company that the working of such mines or minerals is likely to damage the works of the railway, and if the company be willing to make com-

(s) *Colley v. L. & N. W. Rail. Co.* (1880), 5 Ex. D. 277; *Ryan v. G. S. & W. Rail. Co.* (1892), 32 L. R. Ir. 15; *Dixon v. G. W. Rail. Co.*, [1897] 1 Q. B. 300.

(t) *Manning v. Eastern Counties Rail. Co.* (1844), 3 Rail. Cas. 637.

(u) *Vide ante*, p. 131.

compensation for such mines or any part thereof to such owner, lessee, or occupier thereof, then he shall not work or get the same; and if the company, and such owner, lessee, or occupier, do not agree as to the amount of such compensation, the same shall be settled as in other cases of disputed compensation.

79. If before the expiration of such thirty days the company do not state their willingness to treat with such owner, lessee, or occupier for the payment of such compensation, it shall be lawful for him to work the said mines or any part thereof for which the company shall not have agreed to pay compensation, so that the same be done in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the district where the same shall be situate; and if any damage (v) or obstruction be occasioned to the railway or works by improper working of such mines, the same shall be forthwith repaired or removed, as the case may require, and such damage made good, by the owner, lessee, or occupier of such mines or minerals, and at his own expence; and if such repair or removal be not forthwith done, or, if the company shall so think fit, without waiting for the same to be done by such owner, lessee, or occupier, it shall be lawful for the company to execute the same, and recover from such owner, lessee, or occupier the expence occasioned thereby, by action in any of the superior courts.

If company unwilling to purchase, owner may work the mines.

80. If the working of any such mines under the railway or works, or within the above-mentioned distance therefrom, be prevented as aforesaid by reason of apprehended injury to the railway, it shall be lawful for the respective owners, lessees, and occupiers of such mines, and whose mines shall extend so as to lie on both sides of the railway, to cut and make such and so many airways, headways, gateways, or water levels through the mines, measures, or strata, the working whereof shall be so prevented, as may be requisite to enable them to ventilate, drain, and work their said mines, but no such airway, headway, gateway, or water level shall be of greater dimensions or section than the prescribed dimensions and sections, and where no dimensions shall be described not greater than eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the railway or works, or so as to injure the same, or to impede the passage thereon.

Mining communications.

81. The company shall from time to time pay to the owner, lessee, or occupier of any such mines extending so as to lie on both sides of the railway all such additional expences and losses as shall be incurred by such owner, lessee, or occupier by reason of the severance of the lands lying over such mines by the railway, or of the continuous working of such mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the railway, and for any

Company to make compensation for injury done to mines;

(v) *Dudley Canal Navigation Co. v. Grazebrook* (1830), 1 B. & Ad. 59; *Stourbridge Canal Co. v. Earl of Dudley* (1860), 30 L. J. Q. B. 108; *Knowles & Sons v. L. & Y. Rail. Co.* (1889), 14 App. Cas. 248; *L. & N. W. Rail. Co. v. Evans*, [1893] 1 Ch. 16; *Dunn v. Birmingham Canal Co.* (1872), L. R. 8 Q. B. 42.

minerals not purchased by the company which cannot be obtained by reason of making and maintaining the railway; and if any dispute or question shall arise between the company and such owner, lessee, or occupier as aforesaid, touching the amount of such losses or expences, the same shall be settled by arbitration (x).

and also for any airway or other work made necessary by the railway.

82. If any loss or damage be sustained by the owner or occupier of the lands lying over any such mines the working whereof shall have been so prevented as aforesaid (and not being the owner, lessee, or occupier of such mines), by reason of the making of any such airway or other work as aforesaid, which or any like work would not have been necessary to be made but for the working of such mines having been so prevented as aforesaid, the company shall make full compensation to such owner or occupier of the surface lands for the loss or damage so sustained by him.

Power to company to enter and inspect the working of mines.

83. For better ascertaining whether any such mines are being worked or have been worked so as to damage the railway or works, it shall be lawful for the company, after giving twenty-four hours' notice in writing, to enter upon any lands through or near which the railway passes wherein any such mines are being worked or are supposed so to be, and to enter into and return from any such mines or the works connected therewith; and for that purpose it shall be lawful for them to make use of any apparatus or machinery belonging to the owner, lessee, or occupier of such mines, and to use all necessary means for discovering the distance from the railway to the parts of such mines which are being worked or about so to be.

Penalty for refusal to inspect.

84. If any such owner, lessee, or occupier of any such mine shall refuse to allow any person appointed by the company for that purpose to enter into and inspect any such mines or works in manner aforesaid, every person so offending shall for every such refusal forfeit to the company a sum not exceeding twenty pounds.

If mines improperly worked, the company may require means to be adopted for the safety of the railway.

85. If it appear that any such mines have been worked contrary to the provisions of this or the special act, the company may, if they think fit, give notice to the owner, lessee, or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the railway, and preventing injury thereto; and if after such notice any such owner, lessee, or occupier do not forthwith proceed to construct the works necessary for making safe the railway, the company may themselves construct such works, and recover the expence thereof from such owner, lessee, or occupier by action in any of the superior courts.

* * * * *

Arbitration.

And with respect to the settlement of disputes by arbitration, be it enacted as follows:

Appointment of arbitrators when ques-

126. When any dispute authorized or directed by this or the special act, or any act incorporated therewith, to be settled by arbitra-

(x) *Whitehouse v. Wolverhampton Rail. Co.* (1869), L. R. 5 Ex. 6; *Mordue v. Dean of Durham* (1873), L. R. 8 C. P. 336; *Barnsley Canal Co. v. Twibell* (1844), 13 L. J. Ch. 434; *R. v. L. & N. W. Rail. Co.*, [1894] 2 Q. B. 512.

tion, shall have arisen, then, unless both parties shall concur in the appointment of a single arbitrator, each party, on the request of the other party, shall nominate and appoint an arbitrator to whom such dispute shall be referred; and every appointment of an arbitrator shall be made on the part of the company, under the hand of the secretary or any two of the directors of the company, and on the part of any other party under the hand of such party, or if such party be a corporation aggregate, under the common seal of such corporation, and such appointment shall be delivered to the arbitrators, and shall be deemed a submission to arbitration on the part of the party by whom the same shall be made; and after any such appointment shall have been made neither party shall have power to revoke the same without the consent of the other, nor shall the death of either party operate as a revocation; and if for the space of fourteen days after any such dispute shall have arisen, and after a request in writing, in which shall be stated the matters so required to be referred to arbitration, shall have been served by the one party on the other party to appoint an arbitrator, such last-mentioned party fail to appoint such arbitrator, then upon such failure the party making the request, and having himself appointed an arbitrator, may appoint such arbitrator to act on behalf of both parties; and such arbitrator may proceed to hear and determine the matters which shall be in dispute; and in such case the award or determination of such single arbitrator shall be final.

tions are to be determined by arbitration.

127. If before the matters so referred shall be determined any arbitrator appointed by either party die, or become incapable to act, the party by whom such arbitrator was appointed may nominate and appoint in writing some other person to act in his place, and if for the space of seven days after notice in writing from the other party for that purpose he fail to do so the remaining or other arbitrator may proceed *ex parte*; and every arbitrator so to be substituted as aforesaid shall have the same powers and authorities as were vested in the former arbitrator at the time of such his death or incapacity as aforesaid.

Vacancy of arbitrator to be supplied.

128. Where more than one arbitrator shall have been appointed, such arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing under their hands an umpire to decide on any such matters on which they shall differ, or which shall be referred to him under this or the special act; and if such umpire shall die, or become incapable to act, they shall forthwith after such death or incapacity appoint another umpire in his place; and the decision of every such umpire on the matters so referred to him shall be final.

Appointment of umpire.

129. If in either of the cases aforesaid the said arbitrators shall refuse, or shall for seven days after request of either party to such arbitration neglect to appoint an umpire, the Board of Trade shall, on the application of either party to such arbitration, appoint an umpire; and the decision of such umpire on the matters on which the arbitrators shall differ, or which shall be referred to him under this or the special act, shall be final.

Board of Trade empowered to appoint an umpire, on neglect of the arbitrators.

In case of death of single arbitrator the matter to begin *de novo*.

If either arbitrator refuse to act the other to proceed *ex parte*.

If arbitrators fail to make their award within twenty-one days the matter to go to the umpire.

Power for arbitrators to call for books, &c.

Arbitrator and umpire declaration.

Costs to be in the discretion of the arbitrators.

Submission to arbitration may be made a rule of court.

The award not to be set aside for matter of form.

Service of notices upon company.

130. If, where a single arbitrator shall have been appointed, such arbitrator shall die, or become incapable to act, before he shall have made his award, the matters referred to him shall be determined by arbitration, under the provisions of this or the special act, in the same manner as if such arbitrator had not been appointed.

131. If, where more than one arbitrator shall have been appointed, either of the arbitrators refuse, or for seven days neglect to act, the other arbitrator may proceed *ex parte*, and the decision of such other arbitrator shall be as effectual as if he had been the single arbitrator appointed by both parties.

132. If, where more than one arbitrator shall have been appointed, and where neither of them shall refuse or neglect to act as aforesaid, such arbitrators shall fail to make their award within twenty-one days after the day on which the last of such arbitrators shall have been appointed, or within such extended time, if any, as shall have been appointed for that purpose by both such arbitrators under their hands, the matter referred to them shall be determined by the umpire to be appointed as aforesaid.

133. The said arbitrators or their umpire may call for the production of any documents in the possession or power of either party which they or he may think necessary for determining the question in dispute, and may examine the parties or their witnesses on oath, and administer the oaths necessary for that purpose.

134. Before any arbitrator or umpire shall enter into the consideration of any matters referred to him he shall, in the presence of a justice, make and subscribe the following declaration; that is to say,

"I, A. B., do solemnly and sincerely declare, that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me, under the provisions of the act [*naming the special act*].

"Made and subscribed in the presence of ."

And such declaration shall be annexed to the award when made; and if any arbitrator or umpire, having made such declaration, shall wilfully act contrary thereto, he shall be guilty of a misdemeanor.

135. Except where by this or the special act, or any act incorporated therewith, it shall be otherwise provided, the costs of and attending every such arbitration, to be determined by the arbitrators, shall be in the discretion of the arbitrators.

136. The submission to any such arbitration may be made a rule of any of the superior courts, on the application of either of the parties.

137. No award made with respect to any question referred to arbitration under the provisions of this or the special act shall be set aside for irregularity or error in matter of form.

138. And be it enacted, that any summons or notice, or any writ, or other proceeding at law or in equity, requiring to be served upon the company, may be served by the same being left at or transmitted through the post directed to the principal office of the company, or

one of their principal offices where there shall be more than one, or being given personally to the secretary, or in case there be no secretary then by being given to any one director of the company.

* * * * *

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices, be it enacted as follows:

Recovery of damages and penalties.

140. In all cases where any damages, costs, or expenses are by this or the special act, or any act incorporated therewith, directed to be paid, and the method of ascertaining the amount or enforcing the payment thereof is not provided for, such amount, in case of dispute, shall be ascertained and determined by two justices; and if the amount so ascertained be not paid by the company or other party liable to pay the same within seven days after demand, the amount may be recovered by distress of the goods of the company or other party liable as aforesaid; and the justices by whom the same shall have been ordered to be paid, or either of them, or any other justice, on application, shall issue their or his warrant accordingly (*y*).

Provision for damages not otherwise provided for.

* * * * *

THE RAILWAYS CLAUSES ACT, 1863.

26 & 27 VICT. c. 92.

An Act for consolidating in One Act certain Provisions frequently inserted in Acts relating to Railways.

[28th July, 1863.]

* * * * *

PART II.

EXTENSION OF TIME.

20. Where a railway is authorized to be constructed by a special act passed either before or after the passing of this act, and the time limited by the special act for the exercise of powers of compulsory purchase of lands, or of powers for construction of the railway and works, is extended by a special act hereafter passed and incorporating this part of this act, then and in every such case the justices, arbitrators, umpires, or juries, as the case may be, who award or assess the compensation to be made by the company to the owners or occupiers of, or other persons interested in, lands taken or used for the purposes of the railway and works, or injuriously affected by the construction thereof, shall, in estimating the amount of such compensation, have regard to, and assess compensation for, the additional damage (if any)

Parties aggrieved by extension of time may have compensation for additional damage.

(*y*) As regards this Act, this section is repealed by S. L. R. Act, 1892, but the section is incorporated in the Waterworks Clauses Act, 1847, by s. 85 of that Act, *post*, p. 467.

sustained by those owners, occupiers, or other persons, by reason of the extension of time.

Existing contracts and notices to take lands not to be affected.

21. The extension of time shall not affect any contract entered into or notice given by the company before the passing of the special act granting the extension, for purchasing, taking, or using any lands which the company was entitled to purchase, take, or use; but every such contract and notice shall be construed and take effect, and the same proceedings may be had thereunder, and all parties thereto shall be entitled to the same rights and remedies in respect thereof, at law and in equity, as if the extension had not been granted.

* * * * *

THE RAILWAY COMPANIES ACT, 1867.

30 & 31 VICT. c. 127.

An Act to amend the Law relating to Railway Companies.
[20th August, 1867.]

* * * * *

Purchase of Lands.

Amendment
(as to railway
companies) of
sect. 85 of
8 & 9 Vict.
c. 18.

36. Where after the passing of this act a company exercise the powers conferred on the promoters of the undertaking by section eighty-five of the Lands Clauses Consolidation Act, 1845, the following provisions shall have effect:

- (1.) The surveyor to be appointed as in that section provided shall be appointed by the Board of Trade instead of by two justices, and all the provisions of that act relative to a surveyor appointed by two justices shall apply to a surveyor so appointed by the Board of Trade:
- (2.) The company shall give not less than seven days' notice of their intention to apply to the Board of Trade for the appointment of a surveyor to any party interested in or entitled to sell and convey the lands in question, and not consenting to the entry of the company:
- (3.) The valuation to be made by the surveyor so appointed shall include the amount of compensation for all damage and injury to be sustained by reason of the exercise of the powers conferred by the said section, as far as such damage and injury are capable of estimation:
- (4.) The sureties to the bond to be given by the company under that section shall, in case the parties differ, instead of being approved of by two justices, be approved of by the Board of Trade, after hearing the parties.

* * * * *

THE REGULATION OF RAILWAYS ACT, 1868.

31 & 32 VICT. c. 119.

An Act to amend the Law relating to Railways.

[31st July, 1868.]

* * * * *

41. Whenever, in the case of any lands purchased or taken otherwise than by agreement for the purposes of any public railway, any question of compensation in respect thereof, or any question of compensation in respect of lands injuriously affected by the execution of the works of any public railway, is under the provisions of the Lands Clauses Consolidation Act, 1845, to be settled by the verdict of a jury empanelled and summoned as in that act mentioned, the company or the party entitled to the compensation may, at any time before the issuing by the company [of a warrant] (z) to the sheriff as by that act directed, apply to a judge of any one of the superior courts of common law at Westminster, who shall, if he think fit, make an order for trial of the question in one of the superior courts upon such terms and in such manner as to him shall seem fit; and the question between the parties shall be stated in an issue to be settled in case of difference by the judge, or as he shall direct, and such issue may be entered for trial and tried accordingly in the same manner as any issue joined in an ordinary action at such place as the judge shall direct; and the proceedings in respect of such issue shall be under and subject to the control and jurisdiction of the court as in ordinary actions therein, but so nevertheless that the jury shall, where the issue relates to the value of lands to be purchased, and also to compensation claimed for injury done or to be done to lands held therewith, deliver their verdict separately in manner provided by the forty-ninth section of the Lands Clauses Consolidation Act, 1845.

Company may apply to common law judge at Westminster to hear cases of compensation under 8 & 9 Vict. c. 18.

42. Whenever a company is called upon or liable under the provisions of the Lands Clauses Consolidation Act, 1845, to issue their warrant to the sheriff in the case of any disputed compensation, and the company shall obtain a judge's order as in the last preceding section mentioned, the obtaining of such an order and notice thereof to the opposite party shall be a satisfaction of the company's duty in respect of the issue of the warrant.

Company may obtain judge's order instead of issuing warrant.

43. The verdict of the jury and judgment of the court upon any issue authorized by this act shall, as regards costs and every other matter incident to or consequent thereon, have the same operation and be entitled to the same effect as if that verdict and judgment had been the verdict of a jury and judgment of a sheriff upon an inquiry conducted upon a warrant to the sheriff issued by the company under the Lands Clauses Consolidation Act, 1845.

Power of verdict of jury and judgment of the court.

44. In so far as any expression used in any of the three preceding sections of this act has any special meaning assigned to it by the Lands Clauses Consolidation Act, 1845, each such expression shall in this act have the meaning so assigned to it.

Interpretation of certain expressions.

* * * * *

(z) *Seemle*, these words have been omitted by mistake: *Tanner v. Swindon Rail. Co.* (1881), 45 L. T. 209.

Section III.—Waterworks.

THE WATERWORKS CLAUSES ACT, 1847 (a).

10 & 11 VICT. c. 17

An Act for consolidating in One Act certain provisions usually contained in Acts authorizing the making of Waterworks for supplying Towns with Water. [23rd April, 1847.]

Whereas it is expedient to comprise in one act sundry provisions usually contained in acts of parliament authorizing the construction of waterworks for supplying towns with water, and that as well for avoiding the necessity of repeating such provisions in each of the several acts relating to such undertakings as for ensuring greater uniformity in the provisions themselves: Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That (b) This act shall extend only to such waterworks as shall be authorized by any act of parliament hereafter to be passed which shall declare that this act shall be incorporated therewith, and all the clauses of this act, save so far as they shall be expressly varied or excepted by any such act, shall apply to the undertaking authorized thereby, so far as the same shall be applicable to such undertaking, and shall, with the clauses of every other act which shall be incorporated therewith, form part of such act, and be construed therewith as forming one act.

Extent of
act

Interpreta-
tions in this
act:

“special
act:”

“pre-
scribed:”

“the lands
and
streams:”

“the under-
taking:”

“the under-
takers.”

And with respect to the construction of this act and any act incorporated therewith, be it enacted as follows:

2. The expression “the special act” used in this act shall be construed to mean any act which shall be hereafter passed authorizing the construction of waterworks, and with which this act shall be incorporated; and the word “prescribed” used in this act in reference to any matter herein stated shall be construed to refer to such matter as the same shall be prescribed or provided for in the special act, and the sentence in which such word occurs shall be construed as if, instead of the word “prescribed,” the expression “prescribed for that purpose in the special act,” had been used; and the expression “the lands and streams” shall mean the lands and streams of water which shall by the special act be authorized to be taken or used for the purposes thereof; and the expression “the undertaking” shall mean the waterworks, and the works connected therewith, by the special act authorized to be constructed; and the expression “the undertakers” shall mean the persons by the special act authorized to construct the waterworks.

* * * * *

(a) *Vide ante*, pp. 134, 145.

(b) Repealed by S. L. R. Act, 1891.

And with respect to the construction of the waterworks, be it enacted as follows:

6. Where by the special act the undertakers shall be empowered, for the purpose of constructing or supplying waterworks (c), to take or use any lands or streams otherwise than with the consent of the owners and occupiers thereof, they shall, in exercising the power so given to them, be subject to the provisions and restrictions contained in this act, and if the waterworks be situated in England or Ireland, to the provisions and restrictions contained in the Lands Clauses Consolidation Act, 1845, and if the waterworks be situated in Scotland, the provisions and restrictions contained in the Lands Clauses Consolidation, Scotland, Act, 1845; and shall make to the owners and occupiers of and all other parties interested in any lands or streams taken or used for the purposes of the special act, or injuriously affected by the construction or maintenance of the works thereby authorized, or otherwise by the execution of the powers thereby conferred, compensation for the value of the lands and streams so taken or used, and for all damage sustained by such owners, occupiers, and other persons, by reason of the exercise, as to such lands and streams, of the powers vested in the undertakers by this or the special act, or any act incorporated therewith; and except where otherwise provided by this or the special act, the amount of such compensation shall be determined in the manner provided by the said Lands Clauses Consolidation Acts respectively for determining questions of compensation with regard to lands purchased or taken under the provisions thereof, and all the provisions of the said last-mentioned acts respectively shall be applicable to determine the amount of any such compensation, and to enforce payment or other satisfaction thereof.

Construction of waterworks to be subject to the provisions of this act and the Lands Clauses Consolidation Acts, 1845.

* * * * *

11. The undertakers in constructing the waterworks shall not deviate (d) from the line of the works laid down in the said plan more than the prescribed number of yards, and where no number of yards is prescribed not more than ten yards, nor in any case to any greater extent than the line of lateral deviation described in the said plans with respect to such works, nor take nor use, for the purpose of such deviation, the lands of any person not mentioned in the books of reference, without his previous consent in writing, unless the name of such person shall have been omitted by mistake, and the fact that such omission happened from mistake shall have been certified in manner hereinbefore provided.

Not to deviate beyond limits defined upon plans, &c.

12. Subject to the provisions and restrictions in this and the special act, and any act incorporated therewith, the undertakers may execute any of the following works for constructing the waterworks; (that is to say,)

Undertakers, subject to provisions of this and the special act, may execute the works herein named.

They may enter upon any lands and other places described on the said plans and in the said books of reference, and take levels of the same, and set out such parts thereof as they shall think

(c) See *ante*, p. 147.

(d) Cf. R. Cl. Act, 1845, s. 15, *ante*, p. 443.

necessary, and dig and break up the soil of such lands, and trench and sough the same, and remove or use all earth, stone, mines, minerals, trees, or other things dug or gotten out of the same:

They may from time to time sink such wells or shafts, and make, maintain, alter, or discontinue such reservoirs, waterworks, cisterns, tanks, aqueducts, drains, cuts, sluices, pipes, culverts, engines, and other works, and erect such buildings, upon the lands and streams authorized to be taken by them, as they shall think proper, for supplying the inhabitants of the town or district within the prescribed limits with water:

They may from time to time divert and impound the water from the streams mentioned for that purpose in the special act, or the said plans or books of reference, and alter the course of any such streams, not being navigable, and also take such waters as may be found in and under or on the lands to be taken for constructing the works:

Undertakers to make compensation for damages.

Provided always, that in the exercise of the said powers the undertakers shall do as little damage as can be, and in all cases where it can be done shall provide other watering places, drains, and channels for the use of adjoining lands, in place of any such as shall be taken away or interrupted by them, and shall make full compensation to all parties interested for all damage sustained (*e*) by them through the exercise of such powers.

Penalty for obstructing construction of works.

13. Every person who shall wilfully obstruct any person acting under the authority of the undertakers in setting out the line of the works, or pull up or remove any poles or stakes driven into the ground for the purpose of setting out the line of such works, or deface or destroy any works made for the same purpose, shall be liable to a penalty not exceeding five pounds for every such offence.

Penalty for illegally diverting water.

14. After the streams or supplies of water hereby or by the special act authorized to be taken by the undertakers shall have been so taken, every person who shall illegally divert or take the waters supplying or flowing into the streams so taken, or any part thereof, or who shall do any unlawful act whereby the said streams or supplies of water may be drawn off or diminished in quantity, and who shall not immediately repair the injury done by him, on being required so to do by the undertakers, so as to restore the said waters to the state in which they were before such act, shall forfeit to the undertakers any sum which shall be awarded, in England or Ireland, by two justices, and in Scotland by the sheriff, not exceeding five pounds for every day during which the said supply of water shall be diverted or diminished by reason of any act done by or by the authority of such person, and any sum so forfeited shall be in addition to the sum which he may be lawfully adjudged liable to pay to the undertakers for any damage which they may sustain by reason of their supply of water being diminished; and the payment of the sum so forfeited shall not bar or affect the right of the undertakers to bring or raise an action at law against such person for the damage so committed.

(*e*) *Vide ante*, p. 146. As to riparian and neighbouring owners' rights in waters, see Michael & Will on Gas and Water.

15. Provided always, that nothing herein contained shall prevent the owners and occupiers for the time being of lands through or by which such streams shall flow from using the waters thereof in such manner and to such extent as they might have done before the passing of the special act, unless they shall have received compensation in respect of their right of so using such water.

Reservation of existing rights.

And with respect to the construction of works for the accommodation of lands adjoining the waterworks, be it enacted as follows:

Differences as to the construction of accommodation works.

16. Where by the special act the undertakers shall be required to erect any works for making good the interruption caused to any lands adjoining or near the waterworks, or otherwise, for the accommodation of such lands, then if any difference shall arise respecting the construction of any such accommodation works (f), or the kind or size or sufficiency thereof, or respecting the maintenance thereof, the same shall be determined in England or Ireland by two justices, and in Scotland by the sheriff, and such justices or sheriff shall also appoint the time within which such accommodation works shall be begun and finished by the undertakers.

17. If the undertakers shall for fourteen days next after the time appointed by such justices or sheriff for the beginning of any such accommodation works fail to begin such works, or, having begun such works, fail diligently to execute the same in a sufficient manner, the person aggrieved by such failure may execute such works or repairs; and the reasonable expenses thereof shall, on demand, be repaid by the undertakers to the person by whom the same shall so have been executed; and if there be any dispute about the amount or nature of such expenses, the same shall be settled in England or Ireland by two justices, and in Scotland by the sheriff.

If undertakers fail to execute such works, persons aggrieved may perform the same, and charge the expense to the undertakers.

And with respect to mines (g), be it enacted as follows:

18. The undertakers shall not be entitled to any mines of coal, ironstone, slate, or other minerals under any land purchased by them, except only such parts thereof as shall be necessary to be dug or carried away or used in the construction of the waterworks, unless the same shall have been expressly purchased, and all such mines, excepting as aforesaid, shall be deemed to be excepted out of the conveyance of such lands, unless they shall have been expressly named therein and conveyed thereby (h).

Undertakers not entitled to mines unless previously purchased.

19. The undertakers shall from time to time, within six months from the time at which any pipes, conduits, or underground works shall have been laid down or formed by them, cause a survey and map to be made of the district within which any such pipes or underground works shall be laid, on a scale not less than one foot to a mile, and shall cause to be marked thereon the course and situation of all existing pipes or conduits for the collection, passage, or dis-

Map and plan of underground works of undertakers to be made.

(f) *Vide ante*, p. 127; and R. Cl. Act, 1845, ss. 68—74, *ante*, p. 450.

(g) *Vide ante*, p. 134; and R. Cl. Act, 1845, ss. 77—85, *ante*, p. 452.

(h) Sects. 18—27 are incorporated into the Public Health Act, 1875, for the support of sewers, &c. by the Public Health Act Amendment Act, 1883, s. 3 (*post*, p. 512).

tribution of water and underground works belonging to them, in order to show all such underground works within the said district, and shall, within six months from the making of any alterations or additions, cause the said map to be from time to time corrected, and such additions made thereto as may show the line and situation of all such pipes, conduits, and underground works as may be laid down or formed by them from time to time after the passing of the special act, and such map and plan, or a copy thereof, with the date expressed thereon of the last time when the same shall have been so corrected as aforesaid, shall be kept in the office of the undertakers, and shall be open to the inspection of all persons interested in the same within the said district.

Copies of such map or plan to be deposited with clerk of the peace, &c.

20. The undertakers shall, from time to time, within three months from the time at which any such map or plan, or any such correction thereof or addition thereto, shall have been made as aforesaid, deposit with the clerks of the peace in England or Ireland, and with the sheriff clerks in Scotland, of every county, and the town clerk of every burgh in Scotland, in which such district or any part thereof may be situate, and also with the parish clerks of the several parishes in England, and clerks of the union of the several parishes in Ireland, and the schoolmasters of the several parishes in Scotland, in which such underground works shall be situate, copies of the said map or plan, with all such particulars, and all such corrections and additions as aforesaid, so far as relates to such counties, burghs, and parishes respectively.

Clerks of the peace, &c. to receive and keep copies of the map, &c. and allow inspection.

7 Will. 4 &
1 Vict. c. 83.

21. The said clerks of the peace, sheriff clerks, and town clerks, parish clerks, clerks of the union, and schoolmasters shall receive the said copies of the said map and plan respectively, and shall keep the same, and shall allow all persons interested to inspect the same, and take copies or extracts of and from the same, in the like manner, and upon the like terms, and under the like penalty for default, as is provided in the case of maps and plans deposited under an act passed in the first year of the reign of her Majesty, intituled, "An Act to compel Clerks of the Peace for Counties, and other Persons, to take the Custody of such Documents as shall be directed to be deposited with them under the Standing Orders of either House of Parliament."

Mines lying near the works not to be worked until owners give notice to undertakers of their intentions.

Upon receipt of notice, undertakers may take the mines,

22. Except where otherwise provided for by agreement between the undertakers and other parties, if the owner, lessee, or occupier of any mines or minerals lying under the reservoirs or buildings belonging to the undertakers, or under any of their pipes or works which shall be under ground, and shall be described in the map or plan which shall be so kept and deposited as hereinbefore mentioned, or within the prescribed distance, if any, and if no distance be prescribed within forty yards therefrom, be desirous of working the same, such owner, lessee, or occupier shall give the undertakers notice in writing of his intention so to do thirty days before the commencement of working; and upon the receipt of such notice it shall be lawful for the undertakers to cause such mines to be inspected by any person appointed by them for the purpose, and if it appear to the undertakers that the working of such mines or minerals is likely to damage

the said works, and if they be willing to make compensation for such mines to such owner, lessee, or occupier thereof, then he shall not work the same; and if the undertakers and such owner do not agree as to the amount of such compensation the same shall be settled as in other cases of disputed compensation.

making compensation to the owners.

23. If before the expiration of such thirty days the undertakers do not state their willingness to treat with such owner, lessee, or occupier for the payment of such compensation, it shall be lawful for him to work the said mines, and to drain the same, by means of engines or otherwise, as if this act and the special act had not been passed, so that no wilful damage be done to the said works, and so that the said mines be not worked in an unusual manner; and if any damage or obstruction be occasioned to the works of the undertakers by the working of such mines in an unusual manner the same shall be forthwith repaired or removed (as the case may require), and such damage made good, by the owner, lessee, or occupier of such mines or minerals, and at his own expence, and if such repair or removal be not forthwith done, or if the undertakers shall so think fit, without waiting for the same to be done by such owner, lessee, or occupier, it shall be lawful for the undertakers to execute the same, and recover from such owner, lessee, or occupier the expence occasioned thereby, by action in any of the superior courts.

If company unwilling to treat for payment of compensation, owner may work the mines.

Owners to make good damage occasioned by working the mines in an unusual manner.

24. If the working of any such mines under the said works of the undertakers or within the above-mentioned distance therefrom be prevented as aforesaid by reason of apprehended injury to such works, it shall be lawful for the respective owners, lessees, and occupiers of such mines to cut and make such and so many airways, headways, gateways, or water levels through the mines, measures, or strata the working whereof shall be so prevented as may be requisite to enable them to ventilate, drain, and work any mines or minerals on each or either side thereof, but no such airway, headway, gateway, or water level shall be of greater dimensions or sections than the prescribed dimensions or sections, and where no dimensions are prescribed eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the said works so as to injure the same.

Mining communications.

25. Except where otherwise provided for by agreement the undertakers shall from time to time pay to the owner, lessee, or occupier of any mines of coal, ironstone, and other minerals extending so as to lie on both sides of any reservoirs, buildings, pipes, conduits, or other works, all such additional expences and losses as shall be incurred by such owner, lessee, or occupier by reason of the severance of the lands over such mines or minerals by such reservoirs or other works, or of the continuous working of such mines or minerals being interrupted as aforesaid, or by reason of the same being worked under the restrictions contained in this or the special act; and for any mines or minerals not purchased by the undertakers which cannot be obtained by reason of making and maintaining the said works, or by reason of such apprehended injury from the working thereof as aforesaid; and if any dispute or question shall arise between the undertakers and such owner, lessee, or occupier as aforesaid touching

Company to make compensation to owner, lessee, or occupier of mines for expences incurred by reason of mines being worked.

Disputes to be settled by arbitration.

the price of such minerals, the same shall be settled by arbitration in such manner as is provided by the Lands Clauses Consolidation Act if the undertaking shall be situate in England or Ireland, and by the Lands Clauses Consolidation (Scotland) Act if the undertaking shall be situate in Scotland.

Power to company to enter and inspect the working of mines, after giving notice of the same.

26. For better ascertaining whether any such mines are being worked or have been worked so as to damage the said works it shall be lawful for the undertakers, after giving twenty-four hours' notice in writing, to enter upon any lands through or near which the said works are situate, and wherein any such mines are being worked or are supposed so to be, and to enter into and return from any such mines or the works connected therewith, and for that purpose it shall be lawful for them to make use of any apparatus or machinery belonging to the owner, lessee, or occupier of such mines, and to use all necessary means for discovering the distance from the said works to the parts of such mines which are being worked or about to be worked.

Nothing to prevent undertakers from being liable to actions for injury done to mines.

27. Nothing in this or the special act shall prevent the undertakers from being liable to any action or other legal proceeding to which they would have been liable for any damage or injury done or occasioned to any mines by means or in consequence of the water-works, in case the same had not been constructed or maintained by virtue of this act or the special act.

And with respect to the breaking up of streets for the purpose of laying pipes, be it enacted as follows:

Power to break up streets, &c., under superintendence, and to open drains.

28. The undertakers, under such superintendence as is hereinafter specified, may open and break up the soil and pavement of the several streets and bridges within the limits of the special act; and may open and break up any sewers, drains, or tunnels within or under such streets and bridges, and lay down and place within the same limits pipes, conduits, service pipes, and other works and engines, and from time to time repair, alter, or remove the same, and for the purposes aforesaid remove and use all earth and materials in and under such streets and bridges, and do all other acts which the undertakers shall from time to time deem necessary for supplying water to the inhabitants of the district included within the said limits, doing as little damage as can be in the execution of the powers hereby or by the special act granted, and making compensation for any damage which may be done in the execution of such powers.

Not to enter on private land without consent.

29. Provided always, that nothing herein contained shall authorize or empower the undertakers to lay down or place any pipe, conduit, service pipe, or other work in any land not dedicated to public use without the consent of the owners or occupiers thereof, except that the undertakers at any time may enter upon and lay or place any new pipe in the place of an existing pipe in any land wherein any pipe hath been already lawfully laid down or placed in pursuance of this or the special act, or any other act of parliament, and may repair or alter any pipe so laid down.

* * * *

And with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices or to the sheriff, be it enacted as follows:

85. If the waterworks be in England or Ireland, the clauses of the Railway Clauses Consolidation Act, 1845, with respect to the recovery of damages not specially provided for, and of penalties, and to the determination of any other matter referred to justices (*i*), shall be incorporated with this and the special act; and if the waterworks be in Scotland, the clauses of the Railways Clauses Consolidation Act (Scotland), 1845, with respect to the recovery of damages not specially provided for, and to the determination of any other matter referred to the sheriff or to justices, shall be incorporated with this and the special act; and such clauses shall apply to the waterworks and to the undertakers respectively, and shall be construed as if the word "undertakers" had been inserted therein instead of the word "company."

Recovery of damages and penalties.

Railways Clauses Acts, as to damages, &c. to be incorporated with this and the special Act.

8 & 9 Vict. c. 20, 33.

* * * *

Section IV.—Commons.

THE INCLOSURE ACT, 1854.

17 & 18 VICT. c. 97.

* * * *

15. Where any money shall have been or may hereafter be paid to a committee under the Lands Clauses Consolidation Act, 1845, or under any railway or other special act by which money may have been directed or authorized to be paid to a committee as compensation for the extinction of commonable or other rights, or for lands, being common lands or in the nature thereof, the right to the soil of which may have belonged to the commoners, and the majority of such committee shall be of opinion that the provisions of such act for the apportionment thereof cannot be satisfactorily carried into effect, such majority may make application in writing to the commissioners (*k*) to call a meeting of the persons interested in such compensation money, to determine whether or not such compensation money shall be apportioned under the provisions of this Act.

Application of compensation for common rights paid under 8 & 9 Vict. c. 18.

16. If the majority in number and interest shall resolve that such compensation money shall be apportioned, the amount of such compensation money shall be forthwith paid into the Bank of England, to the credit of an account to be named by the inclosure commissioners for England and Wales (*k*); and the said committee shall be absolutely discharged from all liability in respect of such compensation money,

Money to be paid into Bank of England.

(*i*) *Vide ante*, p. 183.

(*k*) Now the Ministry of Agriculture.

upon payment thereof into the Bank of England as hereinbefore directed.

Interests to
be ascer-
tained by
commis-
sioners.

17. As soon as the said monies shall have been paid into the bank as aforesaid, the said inclosure commissioners (*l*), or any assistant commissioner appointed or to be appointed by them for that purpose, shall proceed to ascertain, determine, and award the names of the parties who were entitled to such estates, rights, and interests in the said common and commonable lands, and the amount or value of their respective shares, rights, and interests therein, and the proportionate amount of the price so to be paid as aforesaid for such estates, rights, and interests to which each party so entitled as aforesaid is entitled, in respect of his share, right, or interest as aforesaid; and the award of the commissioners (*l*) under their common seal, or assistant commissioner in writing under his hand and seal, shall be binding on all parties claiming such estates, rights, and interests as aforesaid; and for the purpose of ascertaining the rights and interests of such parties as aforesaid it shall be lawful for the said inclosure commissioners (*l*) or assistant commissioner to call such meetings as they or he shall think fit of all persons having or claiming any such rights or interests in the said common and commonable lands as aforesaid, at such time and place as the said commissioners (*l*) or assistant commissioner shall think fit, so as the same shall be appointed by a public notice thereof in writing to be affixed at least twelve days before such meeting on the principal outer door of the parish church in which such land or any part is situate; and to be inserted in one of the public newspapers published or generally circulated in the county in which such land is situate; and at such meeting the said commissioners (*l*) or assistant commissioner do and shall proceed to examine into and ascertain all and every the claims which shall be made or put forward in respect of any such rights or interests as aforesaid, and the relative and proportionate value of the estates, rights, and interests of any person or persons claiming to be entitled thereto, and for that purpose do and may employ any valuer or surveyor, and call for and receive such records, deeds, and writings, and such other proof or evidence, as the said commissioners (*l*) or assistant commissioner may think fit; and they and he are and is hereby authorized and required to take the testimony of any witnesses upon oath (which oath they and he are and is respectively hereby empowered to administer), or to take the affirmation of such witnesses in cases where affirmation is allowed by law instead of oath.

As to the
payment of
costs of
inclosure
commis-
sioners, and
as to the
residue of
monies.

18. All the costs and expenses of the said inclosure commissioners (*l*) and assistant commissioner, and of any valuer or surveyor employed by them or him under the provisions hereinbefore contained, shall, in the first place, be paid out of such compensation monies, and the residue of the said monies shall be paid and divided between and amongst the said several parties to be named in the said award, and in the shares and proportions to be ascertained and set forth in such award.

(*l*) Now the Ministry of Agriculture.

19. When it shall appear to the commissioners (*l*) or assistant commissioner that any of the parties entitled to such rights or interests are only entitled thereto for a limited interest, then it shall be lawful for them or him, by their or his award, to direct that the monies to be paid in respect of such right or interest, where the same shall exceed twenty pounds, shall be paid to the trustees acting under the will, conveyance, or settlement under which such person having such limited interest shall be interested in such rights or interests, and where there are no trustees then into the hands of trustees to be appointed under the hands and seal of the commissioners, to be held by them on trusts similar to the uses or trusts to which such rights or interests had been immediately before the payment of such monies into the bank subject or as near thereto as the said commissioners (*l*) or assistant commissioner can ascertain; and the receipts of any trustees to whom any such monies shall be paid as aforesaid shall be good and sufficient discharges for the same: provided always, that the payment of all such sums shall from time to time be subject to such rules and regulations, for the purpose of ensuring the payment thereof to the person or persons duly entitled to receive the same, as the said commissioners (*l*) shall by any order direct.

Compensation for limited interests to be paid to trustees.

20. In all cases where the sum payable by virtue of such award, in respect of any estate, right, or interest, shall not exceed twenty pounds, and the person entitled to such estate, right, or interest shall be under any disability, or incapacity, such sum shall and may be paid to the guardian, committee, or husband of such person; and where any such person shall have a limited interest only in such estate, right, or interest, the whole of such sum shall and may, nevertheless, be paid to the person having such limited interest, to his or her guardian, committee, or husband, as the case may be.

As to sums payable in respect of lands not exceeding 20/.

* * * * *

THE COMMONABLE RIGHTS COMPENSATION ACT, 1882.

45 VICT. c. 15.

An Act to provide for the better application of Moneys paid by way of Compensation for the compulsory acquisition of Common Lands and extinguishment of Rights of Common (m).
[19th June, 1882.]

1. This act may be cited as the Commonable Rights Compensation Act, 1882. Short title.

2.—(1.) With respect to any money which has been or hereafter may be paid by any railway or other public company or corporate body or otherwise under the provisions of the Lands Clauses Act Application of compensation money for common lands.

(*l*) Now the Ministry of Agriculture.

(*m*) The preamble was repealed by S. L. R. Act, 1898.

and any act incorporated therewith, or of any other act of parliament to a committee of commoners as compensation for the extinguishment of commonable or other rights or for lands being common lands or in the nature thereof the right to the soil of which may belong to the commoners, the committee (or a majority in number thereof) or, after the expiration of twelve months from the payment of such money to the committee, any three of the persons claiming to be interested in such money may make application in writing to the commissioners to call a meeting of the persons interested in such money to consider the application thereof, and the commissioners shall call a meeting accordingly, and at such meeting the majority in number and the majority in respect of interest of the persons present may decide by resolution that such money shall be applied and laid out in one or more of the following ways:

- (a.) In the improvement of the remainder of the common land in respect of a portion of which such money has been paid;
- (b.) In defraying the expense of any proceedings under the Metropolitan Commons Acts or under the Inclosure Acts, 1845 to 1878, with reference to a scheme for the local management, or a provisional order for the regulation, of such common land, or of any application to parliament for a private bill or otherwise for the preservation and management of such common land as an open space;
- (c.) In defraying the expense of any legal proceedings for the protection of such common land, or the commoners' rights over the same;
- (d.) In the purchase of additional land to be used as common land;
- (e.) In the purchase of land to be used as a recreation ground for the neighbourhood;

and any such resolution shall bind the minority and all absent parties, and the commissioners shall make an order under their seal for the payment to them of any expenses incurred by them in relation to the matter, and (subject to such payment) for the application of the money according to such resolution, and the committee or the persons in whose names such money stands or is invested, or the survivors or survivor in account of such persons, or the legal personal representative of such survivor, shall, upon service of any such order of the commissioners as aforesaid upon them or any of them or any person on their behalf as the commissioners may direct, pay and apply the said money or realise any security in which the same is invested, and pay and apply the proceeds thereof in manner directed by the said order.

(2.) Any land so purchased as aforesaid for use as common land shall be conveyed to and vest in trustees upon trusts for the persons interested, such trustees to be appointed, and such trusts, and the powers and duties of the trustees, and provisions for the appointment of new trustees from time to time to be declared and provided by an order under the seal of the commissioners, pursuant to resolutions to be passed at a special meeting of the persons interested, convened by the said commissioners by such majorities as aforesaid.

(3.) Every appointment of a new trustee or of new trustees, in pursuance of this act, shall be subject to confirmation by the commissioners under their seal, and upon such confirmation the land shall vest in the remaining and the newly appointed trustees without any conveyance.

(4.) The commissioners shall publish such notice of any meeting held under this act, and frame such rules and give such directions for the conduct of such meetings and the service of orders made by them under this act as they may deem fit, and may, if they think fit, direct an assistant commissioner appointed by them to preside at any such meeting, and any such meeting may be adjourned from time to time.

(5.) Any land so purchased as aforesaid for use as recreation ground shall be conveyed to and vest in the local authority as specified in the schedule to this act for the district within which such land is situate, and shall be held and managed by such local authority, subject to and in accordance with the provisions relating to recreation grounds respectively contained in the Inclosure Acts, 1845 to 1878.

3. Any moneys heretofore paid or hereafter to be paid by any railway or other public company or body corporate or otherwise under the provisions of the Lands Clauses Act, 1845, and any act incorporated therewith, or of any other act of parliament, to any local authority as specified in the schedule to this act, or to the churchwardens and overseers of a parish in respect of any recreation ground or allotment for field gardens taken under the powers of any such act or acts of parliament shall be applied in manner provided by the Inclosure Acts, 1845 to 1878, as amended by the Commons Act, 1879, with respect to the surplus rents arising from recreation grounds and field gardens respectively.

Application of compensation money for recreation grounds and field gardens.

42 & 43 Vict. c. 37.

4. In any case where money paid by way of compensation as aforesaid has, before the passing of this act, been applied in any one or more of the ways authorised by this act, a resolution may be passed, at any meeting of the persons interested, called by the commissioners in manner provided by this act, by such majorities as aforesaid approving of such application, and such application shall, upon the allowance of such resolution by the commissioners under their seal, be deemed to have been lawfully made under the provisions of this act; and the committee or other persons by whom such money has been so applied shall thereupon be discharged from all liability in respect of such money so applied. And the provisions in this act contained with respect to the declaration of trusts, and the powers and duties of trustees, and the appointment of new trustees, from time to time, shall apply in every case in which such money has, before the passing of this act, been laid out in the purchase of land.

Provision for cases where money paid by way of compensation has already been applied in the manner authorised by this act.

5. Copies of all orders made by the commissioners under this act shall be deposited and kept in like manner as copies of an award are by the Inclosure Act, 1845, directed to be deposited and kept.

Deposit of orders.

6. This act shall not extend to the New Forest.

Exception of the New Forest.

SCHEDULE.

Situation of Land.	Local Authority.
Within the Metropolis	The Metropolitan Board of Works.
Not within the Metropolis, but within the district of an urban sanitary authority, as defined by the Public Health Act, 1875, or any act amending the same.	The urban sanitary authority.
Elsewhere than within the Metropolis or the district of an urban sanitary authority as above defined.	The churchwardens and overseers of the parish.

Section V.—Arbitration.

THE ARBITRATION ACT, 1889 (n).

52 & 53 VICT. c. 49.

References by Consent out of Court.

Submission to be irrevocable, and to have effect as an order of court.

Provisions implied in submissions.

Reference to official referee.

Power to stay proceedings where there is a submission.

1. A submission, unless a contrary intention is expressed therein, shall be irrevocable, except by leave of the court or a judge, and shall have the same effect in all respects as if it had been made an order of court.

2. A submission, unless a contrary intention is expressed therein, shall be deemed to include the provisions set forth in the first schedule to this act, so far as they are applicable to the reference under the submission.

3. Where a submission provides that the reference shall be to an official referee, any official referee to whom application is made shall, subject to any order of the court or a judge as to transfer or otherwise, hear and determine the matters agreed to be referred.

4. If any party to a submission, or any person claiming through or under him, commences any legal proceedings in any court against any other party to the submission, or any person claiming through or under him, in respect of any matter agreed to be referred, any party to such legal proceedings may at any time after appearance, and before delivering any pleadings or taking any other steps in the proceedings, apply to that court to stay the proceedings, and that court or a judge thereof, if satisfied that there is no sufficient reason why the matter should not be referred in accordance with the submission, and that the applicant was, at the time when the proceedings were commenced, and still remains, ready and willing to do all

(n) *Vide ante*, pp. 185, 329 *et seqq.*

things necessary to the proper conduct of the arbitration, may make an order staying the proceedings.

5. In any of the following cases:—

- (a) Where a submission provides that the reference shall be to a single arbitrator, and all the parties do not after differences have arisen concur in the appointment of an arbitrator:
- (b) If an appointed arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties do not supply the vacancy:
- (c) Where the parties or two arbitrators are at liberty to appoint an umpire or third arbitrator and do not appoint him:
- (d) Where an appointed umpire or third arbitrator refuses to act, or is incapable of acting, or dies, and the submission does not show that it was intended that the vacancy should not be supplied, and the parties or arbitrators do not supply the vacancy:

Power for the court in certain cases to appoint an arbitrator, umpire, or third arbitrator.

any party may serve the other parties or the arbitrators, as the case may be, with a written notice to appoint an arbitrator, umpire, or third arbitrator.

If the appointment is not made within seven clear days after the service of the notice, the court or a judge may, on application by the party who gave the notice, appoint an arbitrator, umpire, or third arbitrator, who shall have the like powers to act in the reference and make an award as if he had been appointed by consent of all parties.

6. Where a submission provides that the reference shall be to two arbitrators, one to be appointed by each party, then, unless the submission expresses a contrary intention—

Power for parties in certain cases to supply vacancy.

- (a) If either of the appointed arbitrators refuses to act, or is incapable of acting, or dies, the party who appointed him may appoint a new arbitrator in his place:
- (b) If, on such a reference, one party fails to appoint an arbitrator, either originally or by way of substitution as aforesaid, for seven clear days after the other party, having appointed his arbitrator, has served the party making default with notice to make the appointment, the party who has appointed an arbitrator may appoint that arbitrator to act as sole arbitrator in the reference, and his award shall be binding on both parties as if he had been appointed by consent:

Provided that the court or a judge may set aside any appointment made in pursuance of this section.

7. The arbitrators or umpire acting under a submission shall, unless the submission expresses a contrary intention, have power—

Powers of arbitrator.

- (a) to administer oaths to or take the affirmation of the parties and witnesses appearing; and
- (b) to state an award as to the whole or part thereof in the form of a special case for the opinion of the court; and
- (c) to correct in an award any clerical mistake or error arising from any accidental slip or omission.

Witnesses may be summoned by subpœna.

8. Any party to a submission may sue out a writ of *subpœna ad testificandum*, or a writ of *subpœna duces tecum*, but no person shall be compelled under any such writ to produce any document which he could not be compelled to produce on the trial of an action.

Power to enlarge time for making award.

9. The time for making an award may from time to time be enlarged by order of the court or a judge, whether the time for making the award has expired or not.

Power to remit award.

10.—(1.) In all cases of reference to arbitration the court or a judge may from time to time remit the matters referred, or any of them, to the reconsideration of the arbitrators or umpire.

(2.) Where an award is remitted, the arbitrators or umpire shall, unless the order otherwise directs, make their award within three months after the date of the order.

Power to set aside award.

11.—(1.) Where an arbitrator or umpire has misconducted himself, the court may remove him.

(2.) Where an arbitrator or umpire has misconducted himself, or an arbitration or award has been improperly procured, the court may set the award aside.

Enforcing award.

12. An award on a submission may, by leave of the court or a judge, be enforced (o) in the same manner as a judgment or order to the same effect.

References under Order of Court.

Reference for report.

13.—(1.) Subject to rules of court and to any right to have particular cases tried by a jury, the court or a judge may refer any question arising in any cause or matter (other than a criminal proceeding by the Crown) for inquiry or report to any official or special referee.

(2.) The report of an official or special referee may be adopted wholly or partially by the court or a judge, and if so adopted may be enforced as a judgment or order to the same effect.

Power to refer in certain cases.

14. In any cause or matter (other than a criminal proceeding by the Crown),—

- (a) If all the parties interested who are not under disability consent; or,
- (b) If the cause or matter requires any prolonged examination of documents or any scientific or local investigation which cannot in the opinion of the court or a judge conveniently be made before a jury or conducted by the court through its other ordinary officers; or,
- (c) If the question in dispute consists wholly or in part of matters of account;

the court or a judge may at any time order the whole cause or matter, or any question or issue of fact arising therein, to be tried before a special referee or arbitrator respectively agreed on by the parties, or before an official referee or officer of the court.

(o) See R. S. C., O. XLII., r. 31A.

15.—(1.) In all cases of reference to an official or special referee or arbitrator under an order of the court or a judge in any cause or matter, the official or special referee or arbitrator shall be deemed to be an officer of the court, and shall have such authority, and shall conduct the reference in such manner, as may be prescribed by rules of court, and subject thereto as the court or a judge may direct.

Powers and remuneration of referees and arbitrators.

(2.) The report or award of any official or special referee or arbitrator on any such reference shall, unless set aside by the court or a judge, be equivalent to the verdict of a jury.

(3.) The remuneration to be paid to any special referee or arbitrator to whom any matter is referred under order of the court or a judge shall be determined by the court or a judge.

16. The court or a judge shall, as to references under order of the court or a judge, have all the powers which are by this act conferred on the court or a judge as to references by consent out of court.

Court to have powers as in references by consent.

17. Her Majesty's Court of Appeal shall have all the powers conferred by this act on the court or a judge thereof under the provisions relating to references under order of the court.

Court of Appeal to have powers of court.

General.

18.—(1.) The court or a judge may order that a writ of *subpœna ad testificandum* or of *subpœna duces tecum* shall issue to compel the attendance before an official or special referee, or before any arbitrator or umpire, of a witness wherever he may be within the United Kingdom.

Power to compel attendance of witness in any part of the United Kingdom, and to order habeas corpus to issue.

(2.) The court or a judge may also order that a writ of *habeas corpus ad testificandum* shall issue to bring up a prisoner for examination before an official or special referee, or before any arbitrator or umpire.

19. Any referee, arbitrator, or umpire may at any stage of the proceedings under a reference, and shall, if so directed by the court or a judge, state in the form of a special case for the opinion of the court any question of law arising in the course of the reference.

Statement of case pending arbitration.

20. Any order made under this act may be made on such terms as to costs, or otherwise, as the authority making the order thinks just.

Costs.

21. Provision may from time to time be made by Rules of Court for conferring on any master, or other officer of the Supreme Court, all or any of the jurisdiction conferred by this act on the court or a judge (p).

Exercise of powers by masters and other officers.

[22. Any person who wilfully and corruptly gives false evidence before any referee, arbitrator, or umpire shall be guilty of perjury, as if the evidence had been given in open court, and may be dealt with, prosecuted, and punished accordingly] (q).

Penalty for perjury.

23. This act shall, except as in this act expressly mentioned, apply to any arbitration to which her Majesty the Queen, either in right of the Crown, or of the Duchy of Lancaster or otherwise, or the

Crown to be bound.

(p) See R. S. C., O. LIV., r. 12A.

(q) Repealed by s. 17 and Schedule of the Perjury Act, 1911 (1 & 2 Geo. 5, c. 6) and replaced by s. 1 of that Act.

Duke of Cornwall, is a party, but nothing in this act shall empower the court or a judge to order any proceedings to which her Majesty or the Duke of Cornwall is a party, or any question or issue in any such proceedings, to be tried before any referee, arbitrator, or officer without the consent of her Majesty or the Duke of Cornwall, as the case may be, or shall affect the law as to costs payable by the Crown.

Application of
act to re-
ferences under
statutory
powers.

24. This act shall apply to every arbitration under any act passed before or after the commencement of this act as if the arbitration were pursuant to a submission, except in so far as this act is inconsistent with the act regulating the arbitration or with any rules or procedure authorized or recognized by that act.

Saving for
pending
arbitrations.

25. This act shall not affect any arbitration pending at the commencement of this act, but shall apply to any arbitration commenced after the commencement of this act under any agreement or order made before the commencement of this act.

Repeal.

26.—(1.) The enactments described in the second schedule to this act are hereby repealed to the extent therein mentioned, but this repeal shall not affect anything done or suffered, or any right acquired or duty imposed or liability incurred, before the commencement of this act, or the institution or prosecution to its termination of any legal proceeding or other remedy for ascertaining or enforcing any such liability.

(2.) Any enactment or instrument referring to any enactment repealed by this act shall be construed as referring to this act.

Definitions.

27. In this act, unless the contrary intention appears,—

“Submission” means a written agreement to submit present or future differences to arbitration, whether an arbitrator is named therein or not.

“Court” means her Majesty’s High Court of Justice.

“Judge” means a judge of her Majesty’s High Court of Justice.

“Rules of Court” means the Rules of the Supreme Court made by the proper authority under the Judicature Acts.

Extent.

28. This act shall not extend to Scotland or Ireland.

Commence-
ment.

29. This act shall commence and come into operation on the first day of January one thousand eight hundred and ninety.

Short title.

30. This act may be cited as the Arbitration Act, 1889.

SCHEDULES.

THE FIRST SCHEDULE.

PROVISIONS TO BE IMPLIED IN SUBMISSIONS.

a. If no other mode of reference is provided, the reference shall be to a single arbitrator (*r*).

b. If the reference is to two arbitrators, the two arbitrators may appoint an umpire at any time within the period during which they have power to make an award (*s*).

(*r*) See ss. 5, 7, *ante*.

(*s*) See ss. 5, 6, *ante*.

c. The arbitrators shall make their award in writing within three months after entering on the reference, or after having been called on to act by notice in writing from any party to the submission, on or before any later day to which the arbitrators, by any writing signed by them, may from time to time enlarge the time (*t*) for making the award.

d. If the arbitrators have allowed their time or extended time to expire without making an award, or have delivered to any party to the submission, or to the umpire a notice in writing, stating that they cannot agree, the umpire may forthwith enter on the reference in lieu of the arbitrators.

e. The umpire shall make his award within one month after the original or extended time appointed for making the award of the arbitrators has expired, or on or before any later day to which the umpire by any writing signed by him may from time to time enlarge the time for making his award.

f. The parties to the reference, and all persons claiming through them respectively, shall, subject to any legal objection, submit to be examined by the arbitrators or umpire, on oath or affirmation, in relation to the matters in dispute, and shall, subject as aforesaid, produce before the arbitrators or umpire all books, deeds, papers, accounts, writings and documents within their possession or power respectively which may be required or called for, and do all other things which during the proceedings on the reference the arbitrators or umpire may require (*u*).

g. The witnesses on the reference shall, if the arbitrators or umpire thinks fit, be examined on oath or affirmation (*x*).

h. The award to be made by the arbitrators or umpire shall be final and binding on the parties and the persons claiming under them respectively.

i. The costs of the reference and award shall be in the discretion of the arbitrators or umpire, who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and may tax or settle the amount of costs to be so paid or any part thereof, and may award costs to be paid as between solicitor and client.

THE SECOND SCHEDULE.

ENACTMENTS REPEALED.

Session and Chapter.	Title or Short Title.	Extent of Repeal.
9 Will. 3, c. 15	An Act for determining differences by arbitration.	The whole Act.
3 & 4 Will. 4, c. 42 . .	An Act for the further amendment of the law and the better advancement of justice.	Sections thirty-nine to forty-one, both inclusive.
17 & 18 Vict. c. 125 . .	The Common Law Procedure Act, 1854.	Sections three to seventeen, both inclusive.
36 & 37 Vict. c. 66 . .	The Supreme Court of Judicature Act, 1873.	Section fifty-six, from "Subject to any Rules of Court" down to "as a judgment by the Court," both inclusive, and the words "Special referees or." Sections fifty-seven to fifty-nine, both inclusive.
47 & 48 Vict. c. 61 . .	The Supreme Court of Judicature Act, 1884.	Sections nine to eleven, both inclusive.

(*t*) See s. 9, *ante*.

(*u*) See ss. 7, 8, 18, *ante*, and R. S. C., O. XXXVI., rr. 48—55c.

(*x*) See ss. 7, 8, 18, *ante*, and R. S. C., O. XXXVI., rr. 49, 50, 55c.

BOOK II.



Section I. (a).



THE ACQUISITION OF LAND (ASSESSMENT OF COMPENSATION) ACT, 1919.

9 & 10 GEO. 5, c. 57.

Tribunal for
assessing
compensation
in respect
of land
compulsorily
acquired
for public
purposes.

1.—(1.) Where by or under any statute (whether passed before or after the passing of this Act) land is authorised to be acquired compulsorily by any Government Department or any local or public authority, any question of disputed compensation, and, where any part of the land to be acquired is subject to a lease which comprises land not acquired, any question as to the apportionment of the rent payable under the lease, shall be referred to and determined by the arbitration of such one of a panel of official arbitrators to be appointed under this section as may be selected in accordance with rules made by the Reference Committee under this section.

(2.) Such number of persons, being persons with special knowledge in the valuation of land, as may be appointed for England and Wales, Scotland and Ireland by the Reference Committee, shall form a panel of persons to act as official arbitrators for the purposes of this Act in England and Wales, Scotland and Ireland respectively: Provided that of the members of the said panel for England and Wales one at least shall be a person having special knowledge of the valuation of land in Wales and acquainted with the Welsh language.

(3.) A person appointed to be a member of the panel of official arbitrators shall hold office for such term certain as may be determined by the Treasury before his appointment, and whilst holding office shall not himself engage, or be a partner of any other person who engages, in private practice or business.

(4.) There shall be paid out of moneys provided by Parliament to official arbitrators such salaries or remuneration as the Treasury may determine.

(5.) The Reference Committee—

(a) for England and Wales shall consist of the Lord Chief Justice of England, the Master of the Rolls and the President of the Surveyors' Institution;

(a) See Book II., Chap. II., *ante*, p. 319.

- (b) for Scotland shall consist of the Lord President of the Court of Session, the Lord Justice Clerk and the Chairman of the Scottish Committee of the Surveyors' Institution;
- (c) for Ireland shall consist of the Lord Chief Justice of Ireland, the Master of the Rolls in Ireland and the President of the Surveyors' Institution, or (if the President of the Surveyors' Institution thinks fit) a person, being a member of the council of that institution and having special knowledge of valuation of land in Ireland appointed by him to act in his place.

2. In assessing compensation, an official arbitrator shall act in accordance with the following rules:—

Rules for
the assessment
of compensa-
tion.

- (1.) No allowance shall be made on account of the acquisition being compulsory:
- (2.) The value of land shall, subject as hereinafter provided, be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise: Provided always that the arbitrator shall be entitled to consider all returns and assessments of capital value for taxation made or acquiesced in by the claimant:
- (3.) The special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government Department or any local or public authority: Provided that any *bonâ fide* offer for the purchase of the land made before the passing of this Act which may be brought to the notice of the arbitrator shall be taken into consideration:
- (4.) Where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to the public health, the amount of that increase shall not be taken into account:
- (5.) Where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the official arbitrator is satisfied that reinstatement in some other place is *bonâ fide* intended, be assessed on the basis of the reasonable cost of equivalent reinstatement:
- (6.) The provisions of Rule (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of land.

For the purposes of this section, an official arbitrator shall be entitled to be furnished with such returns and assessments as he may require.

Provision as to procedure before official arbitrators.

3.—(1.) In any proceedings before an official arbitrator, not more than one expert witness on either side shall be heard unless the official arbitrator otherwise directs:

Provided that, where the claim includes a claim for compensation in respect of minerals, or disturbance of business, as well as in respect of land, one additional expert witness on either side on the value of the minerals, or, as the case may be, on the damage suffered by reason of the disturbance may be allowed.

(2.) It shall not be necessary for an official arbitrator to make any declaration before entering into the consideration of any matter referred to him.

(3.) The official arbitrator shall, on the application of either party, specify the amount awarded in respect of any particular matter the subject of the award.

(4.) The official arbitrator shall be entitled to enter on and inspect any land which is the subject of proceedings before him.

(5.) Proceedings under this Act shall be heard by an official arbitrator sitting in public.

(6.) The fees to be charged in respect of proceedings before official arbitrators shall be such as the Treasury may prescribe.

(7.) Subject as aforesaid, the Reference Committee may make rules regulating the procedure before official arbitrators.

Consolidation of proceedings on claims for compensation in respect of various interests in the same land.

4. Where notices to treat have been served for the acquisition of the several interests in the land to be acquired, the claims of the persons entitled to such interests shall, so far as practicable, and so far as not agreed and if the acquiring authority so desire, be heard and determined by the same official arbitrator, and the Reference Committee may make rules providing that such claims shall be heard together, but the value of the several interests in the land having a market value shall be separately assessed.

Provisions as to costs.

5.—(1.) Where the acquiring authority has made an unconditional offer in writing of any sum as compensation to any claimant and the sum awarded by an official arbitrator to that claimant does not exceed the sum offered, the official arbitrator shall, unless for special reasons he thinks proper not to do so, order the claimant to bear his own costs and to pay the costs of the acquiring authority so far as such costs were incurred after the offer was made.

(2.) If the official arbitrator is satisfied that a claimant has failed to deliver to the acquiring authority a notice in writing of the amount claimed by him giving sufficient particulars and in sufficient time to enable the acquiring authority to make a proper offer, the foregoing provisions of this section shall apply as if an unconditional offer had been made by the acquiring authority at the time when in the opinion of the official arbitrator sufficient particulars should have been furnished and the claimant had been awarded a sum not exceeding the amount of such offer.

The notice of claim shall state the exact nature of the interest in respect of which compensation is claimed, and give details of the compensation claimed, distinguishing the amounts under separate heads and showing how the amount claimed under each head is

calculated, and when such a notice of claim has been delivered the acquiring authority may, at any time within six weeks after the delivery thereof, withdraw any notice to treat which has been served on the claimant or on any other person interested in the land authorised to be acquired, but shall be liable to pay compensation to any such claimant or other person for any loss or expenses occasioned by the notice to treat having been given to him and withdrawn, and the amount of such compensation shall, in default of agreement, be determined by an official arbitrator.

(3.) Where a claimant has made an unconditional offer in writing to accept any sum as compensation and has complied with the provisions of the last preceding subsection, and the sum awarded is equal to or exceeds that sum, the official arbitrator shall, unless for special reasons he thinks proper not to do so, order the acquiring authority to bear their own costs and to pay the costs of the claimant so far as such costs were incurred after the offer was made.

(4.) Subject as aforesaid, the costs of an arbitration under this Act shall be in the discretion of the official arbitrator who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and the official arbitrator may in any case disallow the cost of counsel.

(5.) An official arbitrator may himself tax the amount of costs ordered to be paid, or may direct in what manner they are to be taxed.

(6.) Where an official arbitrator orders the claimant to pay the costs, or any part of the costs, of the acquiring authority, the acquiring authority may deduct the amount so payable by the claimant from the amount of the compensation payable to him.

(7.) Without prejudice to any other method of recovery, the amount of costs ordered to be paid by a claimant, or such part thereof as is not covered by such deduction as aforesaid shall be recoverable from him by the acquiring authority summarily as a civil debt.

(8.) For the purpose of this section, costs include any fees, charges, and expenses of the arbitration or award.

6.—(1.) The decision of an official arbitrator upon any question of fact, shall be final and binding on the parties, and the persons claiming under them respectively, but the official arbitrator may, and shall, if the High Court so directs, state at any stage of the proceedings, in the form of a special case for the opinion of the High Court, any question of law arising in the course of the proceedings, and may state his award as to the whole or part thereof in the form of a special case for the opinion of the High Court.

Finality of award and statement of special cases.

(2.) The decision of the High Court upon any case so stated shall be final and conclusive, and shall not be subject to appeal to any other Court.

7.—(1.) The provisions of the Act or order by which the land is authorised to be acquired, or of any Act incorporated therewith, shall, in relation to the matters dealt with in this Act, have effect subject to this Act, and so far as inconsistent with this Act those provisions shall cease to have or shall not have effect:

Effect of Act on existing enactments.

53 & 54 Vict.
c. 70.
6 & 7 Geo. 5,
c. 63.

Provided that nothing in this Act relating to the rules for assessing compensation shall affect any special provisions as to the assessment of the value of land acquired for the purposes of Part I. or Part II. of the Housing of the Working Classes Act, 1890, or under the Defence of the Realm (Acquisition of Land) Act, 1916, and contained in those Acts respectively, or any Act amending those Acts, if and so far as the provisions in those Acts are inconsistent with the rules under this Act and the provisions of the Second Schedule to the Housing of the Working Classes Act, 1890, as amended by any subsequent enactment (except paragraphs (1), (5), (29), and (31) thereof) shall apply to an official arbitrator as they apply to an arbitrator appointed under that schedule, and an official arbitrator may exercise all the powers conferred by those provisions on such arbitrator.

8 Edw. 7,
c. 36.

(2.) The provisions of this Act shall apply to the determination of the amount of rent or compensation payable in respect of land authorised to be hired compulsorily under the Small Holdings and Allotments Act, 1908, or any Act amending that Act, and any matter required thereby to be determined by a valuer appointed by the Board of Agriculture and Fisheries shall be determined by an official arbitrator in accordance with this Act.

Power to
refer to Com-
missioners
of Inland
Revenue or
to agreed
arbitrator.

8.—(1.) Nothing in this Act shall prevent, if the parties so agree, the reference of any question as to disputed compensation or apportionment of rent to the Commissioners of Inland Revenue or to an arbitrator agreed on between the parties.

(2.) Where a question is so referred to the Commissioners of Inland Revenue, the Commissioners shall not proceed by arbitration, but shall cause an assessment to be made in accordance with the rules for the assessment of compensation under this Act, and the following provisions shall have effect:—

- (a) The parties shall comply with any direction or requirements as to the furnishing of information (whether orally or in writing) and the production of documents and otherwise;
- (b) Any officer of the Commissioners appointed for the purpose shall be entitled to enter on and inspect any land which is subject to the reference to them;
- (c) The Commissioners, if either party so desires within such time as the Commissioners may allow, shall give the parties an opportunity of being heard before such officer of the valuation office of the Commissioners as the Commissioners may appoint for the purpose;
- (d) The assessment when made shall be published to the parties and take effect as if it were an award of an official arbitrator under this Act;
- (e) If either party refuses or neglects to comply with any direction or requirement of the Commissioners, the Commissioners may decline to proceed with the matter, and in that case the question shall be referred to an official arbitrator as if there had been no reference to the Commissioners, and the official arbitrator when awarding costs shall take into consideration any report of the Commissioners as to the

refusal or neglect which rendered such a reference to him necessary.

(3.) When a question is referred to an arbitrator under sub-section (1) of this section, the provisions of this Act, except sections one and four and so much of section three as requires proceedings to be in public and as provides for the fixing of fees, shall apply as if the arbitrator was an official arbitrator.

(4.) Either party to a claim for compensation may require the Commissioners for Inland Revenue to assess the value of the land in respect of which the claim arises, and a copy of any such assessment shall be sent forthwith by the Commissioners to the other party, and a certified copy of such assessment shall be admissible in evidence of that value in proceedings before the official arbitrator, and the officer who made the assessment shall attend, if the official arbitrator so require, to answer such questions as the official arbitrator may think fit to put to him thereon.

9. An official arbitrator may on the application of any person certify the value of land being sold by him to a Government department or public or local authority, and the sale of the land to the department or authority at the price so certified shall be deemed to be a sale at the best price that can reasonably be obtained.

Certificates
of value of
official arbi-
trators.

10.—(1.) The provisions of this Act shall not apply to any purchase of the whole or any part of any statutory undertaking under any statutory provisions in that behalf prescribing the terms on which the purchase is to be effected.

Saving for
statutory
purchases of
statutory
undertakings.

(2.) For the purposes of this section, the expression "statutory undertaking" means an undertaking established by Act of Parliament or order having the force of an Act, and the expression "statutory provisions" includes the provisions of an order having the force of an Act.

11.—(1.) This Act shall apply to Scotland subject to the following modifications:—

Application to
Scotland and
Ireland.

(a) The provisions of this Act other than the provisions of the section thereof relating to rules for the assessment of compensation shall apply to the determination of any question which, under sub-section (11) of section seven or section seventeen of the Small Landholders (Scotland) Act, 1911, is referred to arbitration, as if the Board of Agriculture for Scotland were the acquiring authority, and as if in the said sub-section (11) there were substituted for the Lord Ordinary on the Bills and the Lord Ordinary, except where the Lord Ordinary is therein last referred to, such person as may be prescribed by rules made by the Reference Committee for Scotland; and the provisions of that Act, including the Second Schedule to the Agricultural Holdings (Scotland) Act, 1908, as thereby applied, shall in relation to such determination have effect subject to the aforesaid provisions of this Act:

1 & 2 Geo. 5,
c. 49.

8 Edw. 7,
c. 64.

(b) "High Court" means either division of the Court of Session; "arbitrator" means arbiter, and "easement" means servitude.

(2.) This Act shall apply to Ireland subject to the following modification:—

Nothing in this Act shall affect the determination of the price or compensation to be paid on the compulsory acquisition of land by the Irish Land Commission or Congested Districts Board for Ireland under any statute or the special provisions contained in the Labourers (Ireland) Act, 1885, and the enactments amending the same, with respect to the jurisdiction of the Irish Land Commission in cases where land is taken compulsorily under those provisions for a term of years.

48 & 49 Vict.
c. 77.

Short title,
commence-
ment and
interpreta-
tion.

12.—(1.) This Act may be cited as the Acquisition of Land (Assessment of Compensation) Act, 1919, and shall come into operation on the first day of September nineteen hundred and nineteen, but shall not apply to the determination of any question where before that date the appointment of an arbitration, valuation, or other tribunal to determine the question has been completed, or a jury has been empanelled for the purpose.

(2.) For the purposes of this Act, the expression "land" includes water and any interests in land or water and any easement or right in, to, or over land or water, and "public authority" means any body of persons, not trading for profit, authorised by or under any Act to carry on a railway, canal, dock, water or other public undertaking.



THE ACQUISITION OF LAND (ASSESSMENT OF COMPENSATION) RULES, 1919, DATED DECEMBER 2, 1919, MADE UNDER THE ACQUISITION OF LAND (ASSESSMENT OF COMPENSATION) ACT, 1919 (9 & 10 GEO. 5, c. 57) (b).

In pursuance of the Acquisition of Land (Assessment of Compensation) Act, 1919, the Reference Committee for England and Wales constituted under that Act hereby make the following Rules:—

Short title.

1. These Rules may be cited as the Acquisition of Land (Assessment of Compensation) Rules, 1919.

Interpreta-
tion.

2.—(1.) In these Rules, unless the context otherwise requires:

The expression "the Act" means the Acquisition of Land (Assessment of Compensation) Act, 1919:

The expression "arbitrator" means an official arbitrator:

The expression "question" means any question of disputed compensation, or any question of the apportionment of a rent, which is to be referred to and determined by arbitration in manner provided by the Act.

(b) S. R. & O. 1919, No. 1836/L.30.

(2.) The Interpretation Act, 1889, applies for the purpose of the interpretation of these Rules as it applies for the purpose of the interpretation of an Act of Parliament.

3.—(1.) Where any question has arisen either the acquiring authority or the claimant may at any time after the expiration of fourteen days from the date on which the notice to treat was served send to the Reference Committee an application for the selection of an arbitrator.

Application for selection of official arbitrator.

(2.) The acquiring authority or the claimant, as the case may be, shall, immediately after sending the application to the Reference Committee, send notice of the fact to the claimant or the acquiring authority, as the case may be, together with a copy of the application.

(3.) An application for the selection of an arbitrator shall be in the form set out in the schedule to these Rules or in a form to the like effect.

4.—(1.) The Reference Committee, on receiving a valid application for the selection of an arbitrator, shall, as soon as may be, proceed to select from the panel an arbitrator to deal with the case.

Selection of official arbitrator.

(2.) The Reference Committee shall, as soon as they have selected the arbitrator, inform the acquiring authority and the claimant of the name and address of the person so selected.

5.—(1.) The arbitrator selected shall, as soon as may be, proceed with the determination of the question in dispute, and shall arrange with the acquiring authority and the claimant the time and place of the hearing.

Consideration of questions by official arbitrator.

(2.) The Reference Committee shall send to the arbitrator selected a copy of the application for the appointment of an arbitrator, and the acquiring authority and the claimant shall furnish to the arbitrator on his request any document or other information which it is in their or his power to furnish and which the arbitrator may require for the purpose of considering and determining the case.

(3.) Subject to the provisions of the Act and of these Rules the proceedings before an arbitrator shall be such as the arbitrator, subject to any special directions of the Reference Committee, may in his discretion think fit.

6. The Reference Committee may, in the case of the death or the incapacity of the arbitrator originally selected, or if it is shown to the Committee that it is expedient so to do, in any other case, at any time before the arbitrator has made his award, revoke the reference of the question to the selected arbitrator and select another arbitrator for the purpose of determining the question.

Power to select another official arbitrator.

7.—(1.) Where notices to treat have been served for the acquisition of the several interests in the land to be acquired and questions as to the amount of the compensation have arisen in the case of any two or more of those interests the acquiring authority may, subject as hereinafter provided, either on making the application for the selection of an arbitrator to hear the claims or at any time thereafter make an application to the Reference Committee to have the same person selected as the arbitrator to hear and determine all the claims to which the application relates:

Consolidation of claims relating to several interests in the same land.

Provided that no such application shall be made as respects a claim if an arbitrator has already entered on the consideration of the claim.

(2.) On receiving an application under this Rule the Reference Committee shall select the same person to act as arbitrator in respect of all the claims to which the application relates, and so far as necessary for that purpose may revoke any selection previously made.

(3.) An application under this Rule shall be in the form set out in the schedule to these Rules or in a form to the like effect.

(4.) Where the same person has been selected under this Rule to act as arbitrator in respect of two or more claims the acquiring authority may at any time after he has been so selected apply to him for an order that all the claims shall be heard together.

(5.) Notice of intention to apply to the arbitrator for such an order as aforesaid shall be sent to each claimant and the notice shall specify the date on which and the place at which the arbitrator will hear any objection which may be made to the application.

(6.) If any claimant objects to have his claim heard together with the other claims he shall within seven days after the receipt of the notice aforesaid send notice of his objection to the acquiring authority and the arbitrator.

(7.) Where the acquiring authority apply for an order under this Rule the arbitrator after taking into consideration any objections made to the application shall make such order in the matter as he thinks proper having regard to all the circumstances of the case.

(8.) On an application for an order under this Rule an order for consolidation may be made if the arbitrator thinks fit with respect to some only of the claims, and the order may in any case be made subject to such special directions as to costs, witnesses, method of procedure, and otherwise as the arbitrator thinks proper.

Provision as
to payment
of fees
prescribed
by Treasury.

8.—(1.) If the fees prescribed by the Treasury in pursuance of the powers conferred on them by sub-section (6) of section three of the Act include a fee in respect of an application under these Rules or a fee in respect of the hearing before an official arbitrator, the prescribed fee shall be collected by means of adhesive stamps affixed to or stamps impressed on the application and the award of the arbitrator respectively.

(2.) Any application under these Rules which is not properly stamped in accordance with the foregoing provision shall be treated as invalid, and the award of an official arbitrator shall not be delivered out by him unless and until it has been properly stamped in accordance with the said provision.

Provision as
to sending
notice.

9. Any notice or other document required or authorised to be sent to any person for the purpose of these Rules shall be deemed to be duly sent by post addressed to that person at his ordinary address, and the address of the Reference Committee shall for this purpose be—J. Johnston, Esq., Secretary to the Reference Committee, Room 174, Royal Courts of Justice, Strand, London, W.C.2.

Informalities
not neces-
sarily to
invalidate
proceedings.

10. Save as herein otherwise expressly provided, any failure on the part of any authority or any person to comply with the provisions of these Rules shall not render the proceedings, or anything done in pursuance thereof, invalid, unless the arbitrator so directs.

SCHEDULE.

A.

FORM OF APPLICATION FOR SELECTION OF OFFICIAL ARBITRATOR.

Acquisition of Land (Assessment of Compensation) Act, 1919.

Application for Selection of Official Arbitrator.

To the Reference Committee.

I, being the claimant [*or*, We being the acquiring authority] specified in the annexed particulars, hereby apply for the selection, pursuant to the above Act, of an official arbitrator to hear and determine the question of which particulars are annexed.

*Signed

Date .

* If the application is signed by an agent, add "by . . . , his [*or* their] agent."

Particulars.

Name and address of acquiring authority:

Name and address of acquiring authority's solicitor or agent:

Name and address of claimant:

Name and address of claimant's solicitor or agent:

Description of land to be acquired:

Situation of land to be acquired:

County
Parish .

Nature of question (whether as to amount of compensation or apportionment of rent):

Interest in respect of which compensation is claimed:

B.

FORM OF APPLICATION TO HAVE SAME PERSON APPOINTED AS ARBITRATOR ON CLAIMS IN RESPECT OF VARIOUS INTERESTS IN SAME LAND.

Acquisition of Land (Assessment of Compensation) Act, 1919.

Application to have same person appointed as Arbitrator on Claims in respect of various interests in same land.

To the Reference Committee.

We, being the acquiring authority in the case of the land specified in the annexed particulars, apply, pursuant to the Rules made under

the above Act, to have the same person selected as the official arbitrator to hear and determine all the claims for compensation made in respect of the several interests in the said land.

No official arbitrator has been selected in the case of any of the said claims [*or* An official arbitrator has already been selected in the case of the claims of the persons numbered in the annex of particulars, namely Mr. in the case of No. 1 *state the facts*].

*Signed

Date

* If the application is signed by an agent of the applicants, add “by , their agent.”

Particulars.

Name and address of acquiring authority:

Name and address of acquiring authority’s solicitor or agent:

Description of land to be acquired:

Situation of land to be acquired:

County

Parish

Names and addresses of (i) the persons entitled to the several interests in the land, and (ii) their respective solicitors or agents:	Nature of Interest.
---	---------------------

- | | |
|--------------|----|
| 1. (i) | 1. |
| (ii) | |
| 2. (i) | 2. |
| (ii) | |
| 3. (i) | 3. |
| (ii) | |

We, the Reference Committee for England and Wales under the Acquisition of Land (Assessment of Compensation) Act, 1919, have made the above rules in pursuance of the powers conferred on us by the said Act.

READING, C.J.
STERNDALÉ, M.R.
ANDREW YOUNG, P.S.I.

2nd December, 1919.

Section II.—Emergency Powers of the Crown (c).

THE DEFENCE ACT, 1842.

5 & 6 VICT. c. 94.

* * * * *

16. And be it enacted, that it shall be lawful for the principal officers of Her Majesty's ordnance for the time being to enter on, survey, and mark out, or to cause to be surveyed and marked out, any lands, buildings, or other hereditaments or easements wanted for the service of the Ordnance Department, or for the defence of the realm, or to stop up or divert any public or private footpaths or bridle-roads, and to treat and agree with the owner or owners of such lands, buildings, hereditaments, or easements, or with any person or persons interested therein, either for the absolute purchase thereof, or for the possession or use thereof during such time as the exigence of the public service shall require.

Principal officers may authorize persons to survey and mark out lands, and treat with owners for the absolute purchase thereof.

17. Provided always, and be it enacted, that whenever any foot-path or bridle-road shall be stopped up as aforesaid, another path or road shall be provided and made in lieu thereof respectively, at the expense of the Ordnance Department, and at such convenient distance therefrom as to the principal officers of Her Majesty's ordnance for the time being shall seem proper and necessary.

When foot-paths, &c. are stopped up, other paths to be made in lieu thereof.

18. And be it enacted, that it shall be lawful for all bodies politic or corporate, ecclesiastical or civil, and all feoffees or trustees for charitable or other public purposes, and for all tenants for life and tenants in tail, and for the husbands, guardians, trustees, committees, curators, or attornies of such of the owners or proprietors of or persons interested in any such lands, buildings, or other hereditaments so surveyed and marked out as shall be femes covert, infants, lunatics, idiots, or persons beyond the seas, or otherwise incapable of acting for themselves, to contract and agree with such principal officers, either for the absolute sale of such lands, buildings, or other hereditaments, or for the grant of any lease, either for any term of years certain therein, or for such period as the exigence of the public service shall require. and to convey, surrender, demise, or grant the same to such principal officers, in trust for Her Majesty, her heirs and successors, accordingly; and all such contracts, sales, conveyances, surrenders, leases, and agreements shall be valid and effectual in law to all intents and purposes whatsoever.

Bodies politic may agree for the sale of lands, &c.

19. And be it enacted, that in case any such bodies or other persons hereby authorized to contract on behalf of themselves or others as aforesaid, or any other person or persons interested in any such lands, buildings, or other hereditaments which shall be so marked out and surveyed as aforesaid, shall for the space of fourteen days next after

In default of treating, or where the parties do not agree, the persons

authorized by Her Majesty may require two justices, &c. to put Her Majesty's officers in possession.

Jury to be summoned to value the premises.

notice in writing subscribed by or on behalf of the said principal officers shall have been given to the chief officer or officers of any such body, or to such other persons hereby authorized to contract on behalf of others, or interested themselves, as aforesaid, or left at his, her, or their usual place of abode, refuse or decline to treat or agree, or by reason of absence shall be prevented from treating or agreeing with the said principal officers, or shall refuse to accept such sum of money as shall be offered by the said principal officers as the consideration for the absolute purchase of such lands, buildings, or other hereditaments, or such annual rent or sum as shall be offered for the hire thereof, either for a time certain or for such period as the exigence of the public service may require, then and in such case it shall be lawful for the said principal officers to require two or more justices of the peace, or three or more deputy-lieutenants (one of whom shall be a justice of the peace), or two or more deputy-governors for the county, riding, stewartry, city, or place where such lands, buildings, or other hereditaments shall be, to put the said principal officers, or any person appointed by them, into immediate possession of such lands, buildings, or other hereditaments, which such justices or deputy-lieutenants or deputy-governors are hereby required to do, and shall for that purpose issue their warrants under their hands and seals, commanding possession to be so delivered, and shall also issue their warrants to the sheriff of the county, riding, stewartry, city, or place wherein such lands, buildings, or hereditaments shall be situate, to summon a jury; and every such sheriff is hereby authorized and required to summon and return a jury, properly qualified, of the number of twenty-four, and in the manner required by the laws of *England, Ireland, and Scotland* respectively, who shall meet at some convenient time and place to be mentioned in such summons, out of whom a jury of twelve shall be drawn, in such manner as juries for the trial of issues joined in Her Majesty's Courts at *Westminster* and *Dublin* are drawn by law in *England* and *Ireland* respectively, and in such manner as juries are drawn by law for any trial in *Scotland*; and in case a sufficient number shall not appear, the said sheriff shall choose others of the by-standers, or that can speedily be procured, being qualified as aforesaid; and the said jurymen may be challenged by the parties on either side, but not the array; and the said justices, deputy-lieutenants, or governors respectively may summon witnesses, and adjourn any such meeting if jurymen or witnesses do not attend; and the jury, on hearing any witnesses and evidence that may be produced, shall on their oaths (which oaths, as also the oaths of such witnesses, the said justices, deputy-lieutenants, or governors respectively are hereby empowered and required to administer,) find the compensation to be paid, either for the absolute purchase of such lands, buildings, or other hereditaments, or for the possession or use thereof, as the case may be: Provided always, that it shall not be lawful for the said principal officers to use any lands, buildings, or hereditaments taken under the compulsory process aforesaid for the barrack service, or to erect any barrack buildings thereon.

20. Provided always, and be it enacted, that if the said principal officers, or any person interested in the lands, buildings, or other hereditaments so marked out and surveyed, shall be dissatisfied with the verdict of any such jury, it shall be lawful for them, or their attornies, in *England* and *Ireland*, to apply to the Court of Exchequer at *Westminster* or *Dublin* respectively in the term next, and in *Scotland* to apply within fourteen days after the finding any such verdict to the Court of Session in *Scotland* in time of session, or Lord Ordinary on the Bills in time of vacation, and to suggest to the said Courts or Lord Ordinary respectively that they have reason to be dissatisfied with such verdict, and forthwith give notice thereof to the said principal officers on the one part, or to the party so interested as aforesaid on the other part (as the case may be); and thereupon, in *England* and *Ireland*, the proceedings that shall have been had and the verdict of such jury shall be returned into the said Courts of Exchequer respectively, and if it shall appear to the said Courts to be proper, such suggestion shall be entered on such proceedings as aforesaid, and a writ shall thereupon, by Rule of such Court, or order of any judge of such Court, be directed to the sheriff of the county where such lands, buildings, or other hereditaments shall lie, or, if the same shall lie in two counties, to the sheriff of either of such counties, to summon either a common or special jury, according to the application that shall have been made in that behalf, and as the Court and as such judge shall allow, and who shall respectively be qualified, according to law, to appear before the said justice or justices of assize or *nisi prius* of that county at the next assizes or sittings of *nisi prius*, if the same shall not happen sooner than twenty-one days after such suggestion, otherwise at the next succeeding assizes or sittings, and the compensation to be paid either for the absolute purchase or for the possession or use of such lands, buildings, or other hereditaments (as the case shall be) shall at such assizes or sittings be ascertained by such jury, in like manner as any damages may be inquired of upon any inquisition or inquiry of damages by any jury before any judge of assize or *nisi prius* and the verdict of such jury shall be returned to the said Court of Exchequer, and shall be final and conclusive; and in *Scotland*, if it shall appear proper to the said Court of Session or Lord Ordinary, upon such application, so to do, the said Court or Lord Ordinary shall order and direct the sheriff of the county where such lands, buildings, or other hereditaments shall lie, or if the same shall lie in two counties, to the sheriff of either of such counties, to summon another jury in the manner in which juries are summoned in *Scotland*, properly qualified according to law, to appear before the Lords or Lord of Justiciary at the next circuit, if the same shall not happen sooner than twenty-one days after such application, otherwise at the next succeeding circuit, and the compensation as aforesaid for the lands, buildings, or other hereditaments (as the case shall be) shall at such circuit be ascertained by a jury drawn from the jury summoned as aforesaid in such manner as juries are drawn in *Scotland*, under the direction of the said Lords or Lord of Justiciary aforesaid, and the verdict of such last-mentioned jury shall be final and conclusive, without being

Appeal may be made to the court of Exchequer, &c. if either party is dissatisfied with the verdict of the jury.

subject to review or challenge of any kind: Provided always, that it shall be lawful for the Court that shall have allowed such inquiry, on any application made within four days after the commencement of the succeeding term, or session if in *Scotland*, to order any new trial in relation thereto.

Jury may ascertain the proportion to be paid out of compensation for land to lessees, &c.

21. Provided always, and be it enacted, that it shall be lawful for any jury impanelled before any justice of the peace or magistrate, or deputy-lieutenant or deputy-governor, or before any judge of assize or *nisi prius*, to ascertain the compensation to be paid for any lands, buildings, or other hereditaments under this Act, and they are hereby required to ascertain and settle the proportion to be paid out of such compensation to any persons having any interest as lessees or tenants at will, or otherwise, in any such lands, buildings, or other hereditaments, and the proportion to be paid out of such compensation shall be returned on the verdict: Provided also, that where any such inquiry before any judge of assize or *nisi prius* shall be had on the application of any such lessee or tenant at will, or other person having any inferior interest in any such lands, buildings, or other hereditaments, who may have been dissatisfied with the proportion of compensation settled by the jury to be paid in respect of such interest, it shall not be lawful for the jury in any such case to alter the amount of the entire compensation awarded by any former verdict to be paid for such lands, buildings, or other hereditaments, but only the proportion thereof to be paid to the person or persons having separate interests therein; and it shall not be lawful for any jury on any such inquiry as aforesaid had before any judge of assize or *nisi prius*, as to any such compensation, on the application of any such officer as aforesaid, in any case in which the whole compensation awarded by them shall be the same as the whole compensation awarded by the former jury, to alter the proportion that shall have settled by any such former jury, as to any separate interests in any such lands, buildings, or other hereditaments.

Court to require the party to give security for costs.

22. Provided also, and be it enacted, that it shall be lawful for the Court or judge or Lord Ordinary making any such rule or order to require that the party on whose application the same shall be made shall give such security as shall to such Court, judge, or Lord Ordinary seem proper, for payment of costs, under such circumstances as shall be specified in any rule or order made for that purpose.

Lands not to be taken for the defence of the realm without consent of the owners, unless in certain cases.

23. Provided always and be it enacted, that no such lands, buildings, or other hereditaments shall be so taken without the consent of the owner or owners thereof, or of any such person or persons as aforesaid, acting for or on the behalf of the owner or owners thereof, unless the necessity or expediency of taking the same shall be first certified by the Lord Lieutenant, or two of the deputy-lieutenants, or by the governor or two deputy-governors of the county, riding, stewartry, city, or place in which such lands, buildings, or other hereditaments lie, and unless the taking of such lands, buildings, or other hereditaments be authorized by a warrant under the hand or hands of the Lord High Treasurer, or of the Commissioners of Her Majesty's Treasury of the United Kingdom of *Great Britain and Ireland*, for

the time being, or any three or more of them or unless the enemy shall have actually invaded the United Kingdom at the time when such lands, buildings, or other hereditaments shall be so taken.

24. And be it enacted, that in all cases where any lands, buildings, or other hereditaments shall have been taken under the provisions of the said recited Act of the forty-fourth year of the reign of His Majesty King *George* the Third, or shall be taken under the provisions of this Act, for any term of years, or for such period only as the exigencies of the public service shall require, it shall be lawful for the said principal officers, notwithstanding anything hereinbefore contained, or any other law to the contrary thereof notwithstanding, at any time before the possession thereof shall be delivered up to the owner or owners thereof, or other person or persons acting on his, her, or their behalf, to take down and remove all such buildings or other erections which shall or may have been built or erected thereon for the public service, after the same was or were so taken as aforesaid, and to carry away the materials thereof, making such compensation to the owner or owners of such lands, buildings, or other hereditaments, or other person or persons acting on his, her, or their behalf, for the damage or injury which may have been done thereto or to the soil thereof, by the erection of any such buildings, or otherwise, in consequence of the same having been occupied for the public service, as the said principal officers shall think reasonable, and as shall be agreed upon in that behalf; and if such owner or owners, or other person or persons acting on his, her, or their behalf, shall not be willing to accept the compensation so offered, it shall be lawful for the said principal officers to apply to and require two justices of the peace of the county, riding, stewardry, city, or place to settle and ascertain the compensation which ought to be made for such damage or injury as aforesaid, and such justices shall settle and ascertain the same accordingly, and shall grant a certificate thereof; and the amount of such compensation, so settled and ascertained and certified, shall forthwith be paid by the treasurer, accountant, or other proper officer for the time being of the office or department for the use of which such lands, buildings, or other hereditaments shall have been taken, to the person or persons entitled thereto: Provided always, that nothing in this Act contained shall extend or be construed to extend to alter, prejudice, or affect any agreement which hath been or shall or may be entered into by the said principal officers with any owner or owners of any such lands, buildings, or other hereditaments, or other person or persons acting on his, her, or their behalf, in relation to any such buildings or erections, but every such agreement shall remain valid and effectual in like manner as if this Act had not been passed.

Erections on lands taken for a temporary purpose to be removed before the lands are restored to the owner, and compensation shall be made for the injury done.

In case of disagreement, how compensation shall be settled.

Act not to affect any agreement between the parties.

25. And be it enacted, that where any money shall have been or shall be agreed, or shall have been or shall be required by the verdict of any jury, to be paid or given by the said principal officers, for the absolute purchase or exchange of any messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, grounds, tenements, or hereditaments, or of any reversion, as aforesaid, or of the enfran-

Purchase money payable to bodies politic, &c., how to be invested.

chisement of any copyhold or purchase of any other interest belonging to any such body, or other person or persons under any disability or incapacity, or not having the absolute interest therein, the said money, if the same shall amount to or exceed the sum of two hundred pounds, shall be paid into the hands or in the name of the remembrancer or other proper officer of Her Majesty's Court of Exchequer at *Westminster* or *Dublin*, or the Queen's Remembrancer or other proper officer of the said Court at *Edinburgh*, respectively, for the time being, for the use and benefit of the owners or proprietors of such messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, tenements, or hereditaments, and such remembrancer, Queen's Remembrancer or other proper officer respectively is hereby authorized and required to receive or accept and to give a discharge for the same, and upon the acceptation or receipt thereof to sign a certificate to the barons or judges of the said Court of Exchequer under his hand, purporting and signifying that such money or other consideration was received or accepted by and paid to him in pursuance of this Act, for the use and benefit of such owners or proprietors as shall be named in such certificate; and the said certificate shall be filed or deposited in the said Court of Exchequer at *Westminster*, *Dublin*, or *Edinburgh* respectively, and a true copy thereof, signed by the said remembrancer, Queen's Remembrancer, or other proper officer respectively of such Court, shall and may be read and allowed as evidence for the purposes hereinafter mentioned; and the said remembrancer, Queen's Remembrancer, or other proper officer respectively is hereby required, upon receipt of any such sum or sums of money as aforesaid, to pay the same into the Bank of *England*, or Bank of *Ireland*, or Bank of *Scotland*, or Royal Bank of *Scotland*, as the case may require, and immediately upon the filing or depositing of such certificate the said messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, tenements, or hereditaments, shall be and become vested in the said principal officers of the Ordnance for the time being, for the service of the said Ordnance Department, or for the defence of the realm, in trust for Her Majesty, her heirs and successors.

Barons, &c. of
Exchequer
to make
order for the
investment of
such purchase
money.

26. And be it enacted, that the barons or judges of Her Majesty's Court of Exchequer at *Westminster*, *Dublin*, or *Edinburgh*, of the Degree of the Coif, for the time being, or any one or more of them, shall be and they or he are or is hereby authorized and empowered, in a summary way, upon motion or petition for or on behalf of any person or persons interested in or entitled to the benefit of the money so paid to and received by the said Queen's Remembrancer or other proper officer respectively, or the interest or produce thereof, and upon reading the certificate directed to be signed by the said remembrancer, Queen's Remembrancer, or other proper officer respectively concerning the same as aforesaid, and receiving such further satisfaction as they or he shall think necessary, to make and pronounce such orders and directions for paying the said money or any part of the same, or for placing out such part thereof as shall be principal in the public funds, or upon Government or real securities;

and for payment of the dividends or interest thereof, or any part thereof, to the respective persons entitled to receive the same, or for laying out the principal or any part thereof in the purchase of other lands or hereditaments, to be conveyed and settled to, for, and upon the same uses, trusts, intents, or purposes as the said messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, tenements, or hereditaments, so purchased or taken, stood settled at the time of the payment of such money as aforesaid, or as near thereto as the same can be done, or otherwise concerning the disposition of the said money or any part thereof, and the interest of the same, or any part thereof, for the benefit of the person and persons entitled to and interested in the same respectively, or for appointing any person or persons to be a trustee or trustees for all or any of such purposes, as the said Court shall think just and reasonable.

27. Provided always, and be it enacted, that in case such purchase money as is lastly hereinbefore mentioned shall be less than the sum of two hundred pounds, and shall exceed the sum of twenty pounds, then and in all such cases the same shall, at the option of the person or persons for the time being entitled to the rents and profits of the messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, tenements, or hereditaments, so purchased, or of his, her, or their guardian or guardians, committee or committees, in case of infancy or lunacy, to be signified in writing under their respective hands, be paid into the hands of the said remembrancer, Queen's Remembrancer, or other public officer respectively of the said Court of Exchequer, in order to be applied in manner hereinbefore directed; or otherwise the same shall be paid, at the like option, to three trustees, to be nominated by the person or persons making such option, and approved of by the said principal officers, or any three or more of them, such nomination or approbation to be signified in writing under the hands of the nominating and approving parties, in order that such principal money may be invested in the purchase of stock in the public funds, and that such stock, when purchased, and the dividends arising therefrom, may be applied in manner hereinbefore directed, so far as the case be applicable, without obtaining or being required to obtain the order, direction, or approbation of the said Court of Exchequer.

Investment
of purchase
money when
less than 200*l*.

28. Provided always, and be it enacted, that in case such purchase money shall be less than twenty pounds, then and in all such cases the same shall be applied to the use of the person or persons who would for the time being be entitled to the rents and profits of the messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, tenements, and hereditaments, so purchased, in such manner as the said principal officers, or any three or more of them, shall think fit, or in case of infancy or lunacy, then to his, her, or their guardian or guardians, committee or committees, for the use and benefit of such person or persons entitled respectively.

Investment
of purchase
money when
less than 20*l*.

29. And be it enacted, that upon the death or removal of any such remembrancer, Queen's Remembrancer, or other proper officer respectively, all stock and securities vested in him by virtue of this

Stock and
securities
vested in
remem-

brancer, &c. shall, in case of death or removal, vest in the successor.

Act shall vest in the succeeding remembrancer, Queen's Remembrancer, or other proper officer respectively, for the purpose hereinbefore mentioned, without any assignment or transfer; and all monies paid into the said banks respectively, in pursuance of this Act, or remaining in the hands of any remembrancer, Queen's Remembrancer, or other proper officer respectively, at his death or removal, and not invested in the funds, or placed out on securities, as aforesaid, shall be paid over to the succeeding Queen's Remembrancer or other proper officer respectively for the time being.

Persons in possession deemed entitled to the premises until the contrary shall be shown.

30. Provided always, and be it enacted, that where any question shall arise touching the title of any person to any money to be paid into the Bank of *England*, or Bank of *Scotland*, or Royal Bank of *Scotland*, in the name and with the privity of the remembrancer of the Court of Exchequer, or the Queen's Remembrancer or other proper officer, pursuant to the directions of this Act, or to any bank annuities to be purchased with any such money, or the dividends or interest of any such bank annuities, the person or persons who shall have been in possession of the property so purchased at the time of the purchase shall be deemed to have been lawfully entitled to such property according to such possession, until the contrary shall be shown to the satisfaction of the said Court of Exchequer, and the dividends or interest of the bank annuities to be purchased with such money, and also the capital of such bank annuities, shall be paid, applied, and disposed of accordingly, unless it shall be made to appear to the said Court that such possession or receipt was wrongful, and that some other person or persons was or were lawfully entitled to such property.

For enrolment of deeds relating to lands, &c. in *England* and *Wales*.

31. And be it enacted, that it shall be lawful for the said principal officers to cause all or any deeds, decrees, evidences, or writings, or other instruments whatsoever, relating to any messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, tenements, or hereditaments, in *England* or *Wales*, now or hereafter vested in the said principal officers, to be enrolled in the office of the remembrancer of Her Majesty's Court of Exchequer, or in the High Court of Chancery, and such fees shall be paid for such enrolment as the Lord High Treasurer or the Commissioners of Her Majesty's Treasury shall from time to time appoint, not exceeding such fees as have been used and accustomed to be taken.

Deeds not required to be acknowledged, &c.

32. And be it enacted, that any rule or practice requiring deeds to be acknowledged, or requiring an affidavit or declaration to be made of the due execution of any deeds before enrolment, shall not apply to any deed, decree, evidence, or writing, or other instrument whatsoever by this Act required to be enrolled in Her Majesty's Courts of Chancery or Exchequer in *England* or *Ireland*.

Office copies of enrolments of such deeds, &c. admissible in evidence.

33. And be it enacted, that a copy of the enrolment of every such deed, decree, writing, or other instrument as aforesaid, signed by the proper officer having the custody of such enrolment, and proved upon oath to be a true copy, shall for every purpose whatsoever be sufficient evidence of the contents of such deed, decree, writing, or other instrument in all Courts of law and equity, and on every other occasion

whatsoever shall be of the same force and effect, to all intents and purposes, as such deed, decree, writing, or other instrument would be if the same were respectively produced and shown forth.

34. And be it enacted, that it shall be lawful for the said principal officers, and their successors for the time being, and they are hereby authorized and empowered, to bring, prosecute, and maintain any action or actions of ejectment, or other proceedings at law or in equity, for recovering possession of any messuages, buildings, castles, lines, or other fortifications, manors, lands, tenements, or hereditaments, as now are or hereafter may be vested in them by this Act, or otherwise howsoever, and to distrain or sue for any arrears of rent which shall have become or shall become due for or in respect thereof under any parol or other demise from the said principal officers, and also to bring, prosecute, and maintain any other action or suit in respect of or in relation to such messuages, buildings, castles, forts, lines, or other fortifications, manors, lands, tenements, or hereditaments last aforesaid, or of any trespass or encroachment committed thereon, or damage or injury done thereto, and also upon all covenants and contracts whatsoever now or hereafter made by, to, or with the said principal officers relating to the said Ordnance or Barrack Department, or the defence of the realm; and also to prosecute, any other action, suit, or legal proceedings, civil or criminal, concerning the goods or chattels, stores, monies, and other property, under the care, control, and disposition of the said principal officers; and that in every such action, suit, or other proceedings the said principal officers for the time being shall be called "the principal officers of Her Majesty's Ordnance," without naming them or any of them; and no such action, suit, or other proceedings shall abate by the death, resignation, or removal of such principal officers or any of them, any thing in any Act or Acts of Parliament, or law or laws, to the contrary thereof notwithstanding: Provided nevertheless, that nothing herein contained shall be taken to defeat or abridge, in any such action, suit, or other proceedings, the legal rights, privileges, and prerogatives of Her Majesty, her heirs and successors, but that in all such actions, suits, or other proceedings, brought or instituted in the name and on behalf of the principal officers of Her Majesty's Ordnance, and in all matters relating thereunto, it shall be lawful for the said principal officers to claim, exercise, and enjoy all the same rights, privileges, and prerogatives which have been heretofore claimed, exercised, and enjoyed in any actions, suits, or other proceedings whatsoever in any Court of law or equity, by Her Majesty or her predecessors, in the same manner as if the subject-matter of the said suits or other proceedings were vested in the Crown, and as if the Crown were actually a party to such actions, suits, or other proceedings: Provided also, that it shall be lawful for Her Majesty to proceed by information in her Court of Exchequer, or by any other Crown process, legal or equitable, in any case in which such actions, suits, arbitrations, or other proceedings might have been otherwise instituted.

Ordnance may sue as "The principal officers of Her Majesty's Ordnance," without naming them.

Privileges and prerogatives of the Crown not to be curtailed.

* * * *

Principal officers empowered to give notices, make claims, and authorize entries, &c.

36. And be it enacted, that it shall be lawful for the said principal officers for the time being and they are hereby authorized and empowered to give any notice, make any claim or demand, and to depute or authorize any person or persons to make an entry which shall be requisite or expedient to be given or made by or on behalf of Her Majesty, her heirs or successors, with a view either to compel any tenant, lessee, or occupier of any part or parts of the said possessions of the Crown which are or may be by law vested in the principal officers of Her Majesty's Ordnance, to quit or deliver up the possession thereof, or to compel the performance of any covenant, contract, or engagement in relation thereto, or to recover possession on non-performance of any covenant, contract, or agreement, or to compel the payment of any sum of money which ought to be paid in respect thereof, and to give any other notice, make any other claim or demand, and depute any person or persons to make any other entry which shall or may be requisite or expedient to be given or made by or for or on behalf of Her Majesty, her heirs or successors, touching any of the said possessions which are or may be by law vested in the principal officers of Her Majesty's Ordnance; and that every such notice, claim, or demand which shall be given or made in writing under the hands of the said principal officers for the time being, or any two of them, for any of the purposes aforesaid, and every entry which shall be made by any person or persons deputed or authorized by the said principal officers to make the same, on behalf of Her Majesty, her heirs or successors, into or upon any of the said estates or possessions, shall be good, valid, and effectual to all intents and purposes whatsoever.

Principal officers exempted from personal responsibility.

37. And be it enacted, that nothing contained in this Act, or to be contained in any covenant, contract, lease, or other instrument hereby authorized to be entered into, made, taken, or executed by the said principal officers or any of them, shall extend to charge the person or persons of all or any of the said principal officers executing any such covenant, contract, lease, or other instrument, or the heirs, executors, or administrators of the same principal officers, or any of them, or their or any of their own proper lands, tenements, goods, or chattels, with or for the performance of all or any of the covenants, conditions, or agreements in the same covenant, contract, lease, or other instrument to be contained on the part of the same principal officers, or any of them, nor shall any officer of Her Majesty's Ordnance be personally liable, nor shall the property of any such officer be liable, to any legal process or execution in such actions, suits, arbitrations, or other proceedings as aforesaid.

* * * * *



THE DEFENCE ACT, 1854.

17 & 18 VICT. c. 67.

1. It shall be lawful for the principal officers for the time being of Her Majesty's Ordnance (if they shall think proper so to do) to use and avail themselves of all the powers and provisions contained in the Lands Clauses Consolidation Act, 1845, for the purpose of ascertaining, making, and paying compensation for and extinguishing all rights of common, commonable, and other rights in, over, or affecting any lands the soil of which has at any time been or shall hereafter be purchased or taken by the said principal officers, under the Act of the Fifth and Sixth *Victoria*, chapter ninety-four, and for such purpose the principal officers for the time being of Her Majesty's Ordnance shall be deemed and taken to be promoters of an undertaking within the meaning of the said Lands Clauses Consolidation Act, 1845, and all the powers and provisions of the last-mentioned Act may, if necessary, be treated as if they had been contained in the said Act of the Fifth and Sixth *Victoria*, chapter ninety-four, for the purpose of being used or made available by the said principal officers for the time being: Provided always, that nothing herein contained shall prejudice or affect the powers and authorities of the principal officers of Her Majesty's Ordnance for the time being under the last-mentioned statute.

Principal officers of Ordnance may avail themselves of certain powers contained in 8 & 9 Vict. c. 18, as to extinguishing rights of common, &c.

2. And in case the said principal officers of Her Majesty's Board of Ordnance shall have purchased or shall hereafter purchase any land, and the common, commonable, and other rights in and over the same, and a valuer shall have been appointed in the matter of any inclosure proceeding in respect of such lands under the provisions of "The Acts for the Inclosure, Exchange, and Improvement of Land," the duties and powers of such valuer in relation to the land so purchased shall, upon payment of the purchase money for such common, commonable, and other rights over the same, cease and determine, and the Inclosure Commissioners for *England* and *Wales* shall, by an order under their seal, award such amount of compensation to such valuer as they shall deem just to be paid by the said principal officers, and such valuer shall be bound to accept the same as a full compensation for his services in the matter of the said inclosure, so far as respects the land, and common, commonable, and other rights so purchased.

Power of valuer appointed under Inclosure Act to cease on purchase of common rights by Ordnance.

3. Any purchase of the soil of any lands, or of any common, commonable, or other rights in or over the same, which shall be made under the provisions of any Act of Parliament, shall be valid in law to all intents and purposes, although at the time of such purchase proceedings for an inclosure of such lands were or shall be proceeding.

Purchase may be made although inclosure proceedings pending.

THE QUEEN'S REMEMBRANCER ACT, 1859.

22 & 23 VICT. c. 21.

* * * * *

8. Any money which under the Defence Act, 1842, is required or authorized to be paid into the hands or in the name of the Remembrancer or other proper officer of Her Majesty's Court of Exchequer at Westminster . . . shall be paid into the Bank of England in the name and with the privity of the Accountant-General of the Court of Chancery (*d*), to be placed to his account there in the matter of the particular Act to the credit of the persons claiming to be interested therein (naming them), pursuant to the method prescribed by an Act in force at the time being for regulating the payment of monies into the said Court; and upon the filing in the Court of Chancery of the certificate of such Accountant-General, with the receipt annexed, of the payment into his name as aforesaid of any such money, the hereditaments in respect whereof the same is paid shall become vested in the like persons and in the like manner and for the like purpose as if such money had been paid in manner provided by the Defence Act, 1842, . . . and this Act had not been passed; and the Court of Chancery shall have the like powers in relation to such money as by the said Acts are given to the barons of the Court of Exchequer; and the provisions of the said Acts in relation to such money shall be read and construed as referring to the Court of Chancery and the said Accountant-General in the place of the Court of Exchequer and the said Remembrancer.



THE DEFENCE ACT, 1860.

23 & 24 VICT. c. 112.

* * * * *

How notices
to be given.

9. Every such notice shall be served personally on the said parties, or left at their last usual places of abode, if any such can after diligent inquiry be found, and in case any of such parties be absent from the United Kingdom, or cannot be found after diligent inquiry, shall be addressed to such party and left with the occupier of the lands, or, if there be no such occupier, affixed upon some conspicuous part of such lands:

If any of such parties be a corporation aggregate such notice shall be left at the principal office of such corporation, or, if no such office can after diligent inquiry be found, such notice shall be served on some principal member, if any, of such corporation, and a duplicate of the notice shall be addressed to such corporation and left with the occupier of the lands, or, if there be no such occupier, affixed upon some conspicuous part of such lands.

* * * * *

(*d*) Now the Paymaster-General of the Supreme Court of Judicature.

Determination of Amount of Compensation otherwise than by Agreement.

12. If for fourteen days after the service of any such notice as aforesaid any party on whom the same is served fail to state the particulars of his claim in respect of any lands to which such notice relates, or to treat with the said Secretary of State as to the amount of compensation to be paid to such party or which he is empowered to agree upon,

How compensation to be settled in case of neglect to treat.

Or if the said Secretary of State and such party do not within such fourteen days agree as to the amount of such compensation,

Such amount shall be settled by a jury in like manner as if the same were compensation for lands surveyed and marked out under the Act of the session holden in the fifth and sixth years of Her Majesty, chapter ninety-four, herein-after referred to as "The Defence Act, 1842," as amended by the Act of the session holden in the eighteenth and nineteenth years of Her Majesty, chapter one hundred and seventeen.

13. Provided always, that if the compensation claimed do not exceed two hundred pounds, the same shall be settled by two justices, in manner following; that is to say, it shall be lawful for any justice, upon the application of either party, to summon the other party to appear before two justices at a time and place to be named in the summons, and upon the appearance of the parties, or, in the absence of either of them, upon proof of due service of the summons, it shall be lawful for such justices to determine such amount, and for that purpose to examine the claimant and the witnesses of the parties upon oath.

Provision where compensation claimed is under 200*l*.

14. Where by reason of absence from the United Kingdom any party is prevented from treating; or cannot after diligent inquiry be found, the amount of such compensation shall be determined by valuation in manner following; that is to say, the said Secretary of State shall make application to two justices, and upon proof satisfactory to them that any such party is by reason of absence from the Kingdom prevented from treating, or cannot after diligent inquiry be found, such justices shall, by writing under their hands, nominate a competent surveyor for determining the amount of such compensation as aforesaid, and such surveyor shall determine the same accordingly, and shall annex to his valuation a declaration in writing subscribed by him of the correctness thereof.

Compensation to absent parties to be settled by a surveyor to be appointed by two justices.

15. If any surveyor wilfully and corruptly make any incorrect or false valuation, or wilfully and corruptly act in the matter hereof, he shall be guilty of a misdemeanor.

Surveyor acting corruptly to be guilty of a misdemeanor.

16. The said nomination shall be annexed to the valuation to be made by such surveyor, and shall be preserved together therewith by the said Secretary of State, who shall at all times produce the said valuation and other documents, on demand, to all parties interested in the lands comprised therein.

Valuation to be preserved and produced on demand.

17. Where any damage has been sustained by reason of any works authorised by this Act in or upon lands required to be kept free from buildings and other obstructions, in respect of which works compensation has not been agreed upon, awarded, or otherwise ascertained prospectively, compensation shall be paid in respect thereof

Damage may be ascertained when works done.

when the works have been done, such compensation to be determined in like manner as other compensation under this Act, or as near thereto as circumstances admit.

In estimating damage from works regard to be had to advantages derived.

18. In determining the amount of compensation in respect of damage sustained by reason of any such works regard shall be had to any increase in the extent of land capable of being brought under cultivation by removal of banks, fences, hedges, and ditches, and to any improved drainage and other advantages derived from any such works.

Where any agreement in restraint of building exists, regard to be had thereto in estimating compensation.

19. Where any covenant or agreement has been entered into with the principal officers of Her Majesty's Ordnance or with the said Secretary of State in restraint of the right to build on any lands, and such covenant or agreement is legally or equitably binding on the owner of the lands, regard shall be had in ascertaining the amount of compensation to be paid under this Act for or in respect of such lands (whether the same are required to be taken absolutely or are required to be kept free from buildings) to the existing restriction arising out of such covenant or agreement.

Payment and Application of Compensation in certain Cases.

Provision for payment and application of compensation money in certain cases.

20. Any compensation payable under this Act, for or in respect of any lands, or any interest therein, taken from or holden by any owner who by reason of absence is prevented from treating as aforesaid, or who cannot after diligent inquiry be found, or who refuses to accept such compensation, or neglects or fails to make out a title to such lands or the interest therein claimed by such owner to the satisfaction of the said Secretary of State;

And any compensation payable for or in respect of any lands or any interest therein taken from or holden by any corporation or person not having, independently of this Act and the Defence Act, 1842, as amended as aforesaid, power to agree as to the amount of such compensation, or to sell and convey such lands or such interest,

Shall be paid and applied in manner directed by the sections numbered twenty-five to thirty of the Defence Act, 1842 (and with regard to *England*), as amended by section eight of the Act of the session holden in the twenty-second and twenty-third years of Her Majesty, chapter twenty-one, as if the said sections expressly extended to the said compensation.

On payment into Court of compensation, an addition to be made to meet future expenses.

21. Where any compensation is required to be paid into the Bank of *England* or *Ireland* under this Act, there shall be added thereto a sum of thirty pounds as an equivalent for the expenses consequent upon such payment, and upon such compensation, with such additional sum (which shall be deemed part of such compensation), being so paid, the said Secretary of State shall be discharged from all liability in respect thereof, and the Court of Chancery may allot to any tenant for life or for any other partial or qualified estate in respect of any expenses of investment incurred by him any portion of any such compensation which the Court may deem just.

Provision for payment into Court on failure for three months

22. The said Secretary of State may in any case at or after the expiration of three months from the time at which the compensation for any lands has been agreed upon or otherwise ascertained, if the owner thereof have not in the meantime made out a title thereto

to the satisfaction of the said Secretary of State, pay such compensation, without such addition as aforesaid, into the Bank of *England* or *Ireland*, in manner herein-before referred to, and such payment shall discharge the said Secretary of State from all liability in respect of the money so paid:

after compensation ascertained to deduce a title.

Provided always, that the Court of Chancery may, upon application for payment of such money to the party entitled, in case the Court be of opinion that there was no unreasonable delay in deducing the title, or that a good title was shown, order all or any costs occasioned by such payment into Court to be paid by the said Secretary of State.

23. All orders and directions in relation to any money paid into the Bank of *England* in the name and with the privity of the Accountant-General of the Court of Chancery under this Act, or the securities in or upon which the same may be invested, or the dividends or interest on such money and securities, which under the said Acts the Court of Chancery is empowered to make or give, on motion or petition, may be made or given by the Master of the Rolls or any of the Vice-Chancellors while sitting at Chambers, upon summons, in like manner as in other cases in which proceedings may be so had before the Master of the Rolls and Vice-Chancellor, subject, nevertheless, to any general rules and orders which may hereafter be made concerning the practice, proceedings, or business of the said Court.

Orders concerning money paid into Court may be made at chambers.

* * * * *

Subsequent Compensation for Interests omitted to be purchased.

36. If at any time after the said Secretary of State has entered upon any lands vested in him under this Act, any party appear to be entitled to any estate, right, or interest in or charge affecting such lands which through mistake and inadvertence has been omitted to be purchased or compensated for, the said Secretary of State shall nevertheless remain in the undisturbed possession of such lands, and shall be deemed to have an indefeasible title thereto, but shall pay compensation for any such estate, right, interest, or charge, which but for this enactment might be recovered or enforced, and also pay to such party, or to any other party who may establish a right thereto, full compensation for the mesne profits or interest which would have accrued, to such parties respectively in respect thereof during the interval between the entry of the said Secretary of State thereon and the time of the payment of such compensation by the said Secretary of State so far as such mesne profits or interest may be recoverable at law or in equity:

Provision as to interests omitted to be purchased.

Such compensation shall be agreed on or awarded and paid in like manner as the same would have been agreed on or awarded and paid in case the said Secretary of State had purchased or compensated, for such estate, right, interest, or charge before his entering upon such lands, or as near thereto as circumstances will admit.

37. In estimating the compensation to be given for any such estate, right, interest, or charge affecting any lands, or for any mesne profits or interest, the jury or justices, as the case may be, shall assess the same according to the value of the lands at the time the same were entered upon by the said Secretary of State and without regard to any improvements or works made by him.

How value of such lands to be estimated.

Secretary of
State to pay
the costs of
litigation as
to such
lands.

38. In addition to the said compensation, the said Secretary of State shall, when the right to any such estate, right, interest, or charge has been disputed by him and determined in favour of the party claiming the same, pay the full costs and expenses of any proceedings at law or in equity for the determination or recovery of the same to the parties with whom any such litigation in respect thereof has taken place, and such costs and expenses shall, in case the same be disputed, be settled by the proper officer of the Court in which such litigation took place.

* * * *

Amendment of the Defence Act, 1842.

5 & 6 Vict.
c. 94,
amended
as herein
stated.

46. And whereas the Defence Act, 1842, has been amended by divers Acts, and it is expedient further to amend the same:

The following provisions of this Act in relation to lands to be taken under this Act shall be applicable where lands are surveyed and marked out under the Defence Act, 1842, as amended as aforesaid; (that is to say.)

The provisions concerning the mode of serving notices on owners, lessees, and occupiers, and of notices, writs, or other documents on the said Secretary of State:

The provisions concerning the determination of the amount of compensation for lands otherwise than by agreement:

The provisions concerning the payment and application of compensation, and the disposition of securities on which the same may be invested, and of the interest and dividends of such compensation and securities:

And the provision concerning interests omitted to be purchased, which last-mentioned provision shall apply as well with respect to lands already taken by the said Secretary of State as with respect to lands to be hereafter taken by him under the said Defence Act as amended as aforesaid.

* * * *



THE RANGES ACT, 1891.

54 & 55 VICT. c. 54.

* * * *

2.—(1) Where any land is acquired, either under the Defence Act, 1842, and the Acts amending the same, or for military purposes under any Act with which the Lands Clauses Acts are incorporated, the person or authority acquiring the land may require that the compensation to be paid for the land be settled by arbitration and not by reference to a jury, and thereupon the provisions of the Lands Clauses Acts with reference to arbitration shall, if not already applicable, apply for the purpose of settling the compensation.

* * * *

THE EMERGENCY POWERS ACT, 1920.

10 & 11 GEO. 5, c. 55.

1.—(1) If at any time it appears to His Majesty that any action has been taken or is immediately threatened by any persons or body of persons of such a nature and on so extensive a scale as to be calculated, by interfering with the supply and distribution of food, water, fuel, or light, or with the means of locomotion, to deprive the community, or any substantial portion of the community, of the essentials of life, His Majesty may, by proclamation (hereinafter referred to as a proclamation of emergency), declare that a state of emergency exists.

Issue of
proclamations
of emergency.

No such proclamation shall be in force for more than one month, without prejudice to the issue of another proclamation at or before the end of that period.

(2) Where a proclamation of emergency has been made, the occasion thereof shall forthwith be communicated to Parliament, and, if Parliament is then separated by such adjournment or prorogation as will not expire within five days, a proclamation shall be issued for the meeting of Parliament within five days, and Parliament shall accordingly meet and sit upon the day appointed by that proclamation, and shall continue to sit and act in like manner as if it had stood adjourned or prorogued to the same day.

2.—(1) Where a proclamation of emergency has been made, and so long as the proclamation is in force, it shall be lawful for His Majesty in Council, by Order, to make regulations for securing the essentials of life to the community, and those regulations may confer or impose on a Secretary of State or other Government department, or any other persons in His Majesty's service or acting on His Majesty's behalf, such powers and duties as His Majesty may deem necessary for the preservation of the peace, for securing and regulating the supply and distribution of food, water, fuel, light, and other necessities, for maintaining the means of transit or locomotion, and for any other purposes essential to the public safety and the life of the community, and may make such provisions incidental to the powers aforesaid as may appear to His Majesty to be required for making the exercise of those powers effective:

Emergency
regulations.

Provided that nothing in this Act shall be construed to authorise the making of any regulations imposing any form of compulsory military service or industrial conscription:

Provided also that no such regulation shall make it an offence for any person or persons to take part in a strike, or peacefully to persuade any other person or persons to take part in a strike.

(2) Any regulations so made shall be laid before Parliament as soon as may be after they are made, and shall not continue in force after the expiration of seven days from the time when they are so laid unless a resolution is passed by both Houses providing for the continuance thereof.

(3) The regulations may provide for the trial, by courts of summary jurisdiction, of persons guilty of offences against the regulations; so, however, that the maximum penalty which may be inflicted for any offence against any such regulations shall be imprisonment

with or without hard labour for a term of three months, or a fine of one hundred pounds, or both such imprisonment and fine, together with the forfeiture of any goods or money in respect of which the offence has been committed: Provided that no such regulations shall alter any existing procedure in criminal cases, or confer any right to punish by fine or imprisonment without trial.

(4) The regulations so made shall have effect as if enacted in this Act, but may be added to, altered, or revoked by resolution of both Houses of Parliament or by regulations made in like manner and subject to the like provisions as the original regulations; and regulations made under this section shall not be deemed to be statutory rules within the meaning of section one of the Rules Publication Act, 1893.

56 & 57 Vict.
c. 66.

(5) The expiry or revocation of any regulations so made shall not be deemed to have affected the previous operation thereof, or the validity of any action taken thereunder, or any penalty or punishment incurred in respect of any contravention or failure to comply therewith, or any proceeding or remedy in respect of any such punishment or penalty.

Short title
and applica-
tion.

3.—(1) This Act may be cited as the Emergency Powers Act, 1920.

(2) This Act shall not apply to Ireland.

* * * * *

Section III. (e).—Public Health and Metropolis Management.

THE PUBLIC HEALTH ACT, 1875 (f).

38 & 39 VICT. c. 55.

*An Act for consolidating and amending the Acts relating to
Public Health in England.* [11th August, 1875.]

* * * * *

PURCHASE OF LAND.

Power to
purchase
lands.

175. Any local authority may for the purposes and subject to the provisions of this act purchase or take on lease sell or exchange any lands (g), whether situated within or without their district; they may also buy up any water-mill dam or weir which interferes with the proper drainage of or the supply of water to their district.

(e) See Book II., Chap. IV., *ante*, p. 338. A certain number of cases dealing with minor points under the Public Health Acts have been inserted as notes to the Acts.

(f) *Vide ante*, p. 338.

(g) *Tunbridge Wells Corporation v. Baird*, [1896] A. C. 434; *St. Mary, Battersea, Vestry v. County of London and Brush Provincial E. L. Co.*, [1899] 1 Ch. 474; *Westminster Corporation v. L. & N. W. Rail. Co.*, [1905] A. C. 426.

Any lands acquired by a local authority in pursuance of any powers in this act contained and not required for the purpose for which they were required shall (unless the Local Government Board otherwise direct (*h*)) be sold at the best price that can be gotten for the same, and the proceeds of such sale shall be applied towards discharge, by means of a sinking fund or otherwise, of any principal moneys which have been borrowed by such authority on the security of the fund or rate applicable by them for the general purposes of this act, or if no such principal moneys are outstanding shall be carried to the account of such fund or rate.

176. With respect to the purchase of lands by a local authority for the purposes of this act, the following regulations shall be observed; (that is to say,)

Regulations
as to purchase
of land.

- (1.) The Lands Clauses Consolidation Acts, 1845, 1860, and 1869, shall be incorporated with this act, except the provisions relating to access to the special act, and except section one hundred and twenty-seven of the Lands Clauses Consolidation Act, 1845:
- (2.) The local authority, before putting in force any of the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, shall

Publish once at the least in each of three consecutive weeks in the month of November, in some local newspaper circulated in their district, an advertisement describing shortly the nature of the undertaking in respect of which the lands are proposed to be taken, naming a place where a plan of the proposed undertaking may be seen at all reasonable hours, and stating the quantity of lands that they require; and shall further

Serve a notice (*i*) in the month of December on every owner or reputed owner, lessee or reputed lessee, and occupier of such lands, defining in each case the particular lands intended to be taken, and requiring an answer stating whether the person so served assents, dissents, or is neuter in respect of taking such lands:

- (3.) On compliance with the provisions of this section with respect to advertisements and notices, the local authority may, if they think fit, present a petition under their seal to the Local Government Board. The petition shall state the lands intended to be taken, and the purposes for which they are required, and the names of the owners, lessees and occupiers of lands who have assented, dissented or are neuter in respect of the taking such lands, or who have returned no answer to the notice; it shall pray that the local authority may, with reference to such lands, be allowed to put in force the powers of the said Lands Clauses Con-

(*h*) *Att.-Gen. v. Hamvell U. D. C.*, [1900] 1 Ch. 51.

(*i*) *Burges v. Bristol Urban Sanitary Authority* (1886), 2 Times L. R. 719; *Birch v. St. Marylebone Vestry* (1869), 20 L. T. 697; cf. *Higgins v. Lord Mayor of Dublin* (1891), 28 L. R. Ir. 484.

solidation Acts with respect to the purchase and taking of lands otherwise than by agreement, and such prayer shall be supported by such evidence as the Local Government Board requires:

- (4.) On the receipt of such petition and on due proof of the proper advertisements having been published and notices served the Local Government Board shall take such petition into consideration, and may either dismiss the same, or direct a local inquiry as to the propriety of assenting to the prayer of such petition; but until such inquiry has been made no provisional order shall be made affecting any lands without the consent of the owners lessees and occupiers thereof:
- (5.) After the completion of such inquiry the Local Government Board may, by provisional order, empower the local authority to put in force, with reference to the lands referred to in such order, the powers of the said Lands Clauses Consolidation Acts with respect to the purchase and taking of lands otherwise than by agreement, or any of them, and either absolutely or with such conditions and modifications as the Board may think fit, and it shall be the duty of the local authority to serve a copy of any order so made in the manner and on the person in which and on whom notices in respect of such lands are required to be served:

Provided that the notices by this section required to be given in the months of November and December may be given in the months of September and October or of October and November, but in either of such last-mentioned cases an inquiry preliminary to the provisional order to which such notices refer shall not be held until the expiration of one month from the last day of the second of the two months in which the notices are given; and any notices or orders by this section required to be served on a number of persons having any right in over or on lands in common may be served on any three or more of such persons on behalf of all such persons.

Power to
let lands.

177. Any local authority may, with the consent of the Local Government Board, let for any term any lands which they may possess, as and when they can conveniently spare the same.

Provision for
lands belong-
ing to the
Duchy of
Lancaster.

178. The chancellor and council of the Duchy of Lancaster for the time being may, if they think fit, (but subject and without prejudice to the rights of any lessee tenant or occupier,) from time to time contract with any local authority for the sale of, and may (subject as aforesaid) absolutely sell and dispose of, for such sum as to the said chancellor and council may appear sufficient consideration, the whole or any part of any lands belonging to her Majesty her heirs or successors in right of the said duchy, or any right interest or easement in through over or on any such lands which for the purposes of this act such local authority from time to time deem it expedient to purchase; and on payment of the purchase money, as provided by the Duchy of Lancaster Lands Act, 1855, the said chancellor and council may grant and assure to the said authority, under the seal of the said duchy, in the name of her Majesty her heirs or successors the subject of such contract or sale, and such money shall be dealt with as if such subject had been sold under the authority of the Duchy of Lancaster Lands Act, 1855.

ARBITRATION.

179. In case of dispute as to the amount of any compensation to be made under the provisions of this act (except where the mode of determining the same is specially provided for), and in case of any matter which by this act is authorised or directed to be settled by arbitration (*k*), then, unless both parties concur in the appointment of a single arbitrator, each party shall appoint an arbitrator to whom the matter shall be referred. Mode of reference to arbitration.

180. With respect to arbitrations under this act, the following regulations shall be observed; (that is to say,) Regulations as to arbitration.

- (1.) Every appointment of an arbitrator under this act when made on behalf of the local authority shall be under their common seal, and on behalf of any other party under his hand (*l*), or if such party be a corporation aggregate under their common seal:
- (2.) Every such appointment shall be delivered to the arbitrators, and shall be deemed a submission to arbitration by the parties making the same:
- (3.) After the making of any such appointment the same shall not be revoked without the consent of both parties, nor shall the death of either party operate as a revocation:
- (4.) If for the space of fourteen days after any matter by this act authorised or directed to be settled by arbitration has arisen, and notice in writing by one party who has duly appointed an arbitrator has been given to the other party, stating the matter to be referred, and accompanied by a copy of such appointment, the party to whom notice is given fails to appoint an arbitrator, the arbitrator appointed by the party giving the notice shall be deemed to be appointed by and shall act on behalf of both parties:
- (5.) If before the determination of any matter so referred any arbitrator dies or refuses or becomes incapable to act, the party by whom such arbitrator was appointed may appoint in writing another person in his stead; and if such party fails so to do for the space of seven days after notice in writing from the other party in that behalf, the remaining arbitrator may proceed *ex parte*; and every arbitrator so appointed shall have the same powers and authorities as were vested in the arbitrator in whose stead the appointment is made:
- (6.) If a single arbitrator dies or becomes incapable to act before the making of his award, or fails to make his award within twenty-one days after his appointment, or within such extended time, if any, as may have been duly appointed by him for that purpose, the matters referred to him shall be again referred to arbitration under the provisions of this act, as if no former reference had been made:

(*k*) *Ex parte Rayner* (1878), 3 Q. B. D. 446; *Re Chesterfield Corporation and Brampton Local Board* (1886), 50 J. P. 824.

(*l*) *In re Gifford and Bury Town Council* (1888), 20 Q. B. D. 368.

- (7.) Where there is more than one arbitrator, the arbitrators shall, before they enter on the reference, appoint by writing under their hands an umpire, and if the person appointed to be umpire dies or becomes incapable to act, the arbitrators shall forthwith appoint another person in his stead; and if the arbitrators neglect or refuse to appoint an umpire for seven days after being requested so to do by any party to the arbitration, the Local Government Board shall, on the application of any such party, appoint an umpire:
- (8.) If the arbitrators fail to make their award within twenty-one days after the day on which the last of them was appointed, or within such extended time (if any) as may have been duly appointed by them for that purpose, the matters referred shall be determined by the umpire:
- (9.) The time (*m*) for making an award by arbitrators under this act shall not in any case be extended beyond the period of two months from the date of the submission, and the time (*n*) for making an award by an umpire under this act shall not in any case be extended beyond the period of two months from the date of the reference of the matters to him:
- (10.) Before any arbitrator or umpire enters on a reference under this act he shall make and subscribe the following declaration before a justice of the peace; (that is to say,)

“I, A.B., do solemnly and sincerely declare that I will faithfully and honestly, and to the best of my skill and ability, hear and determine the matters referred to me under the Public Health Act, 1875. A.B.”
- (11.) Such declaration shall be annexed to the award when made; and any arbitrator or umpire who wilfully acts contrary to such declaration shall be guilty of a misdemeanour:
- (12.) Any arbitrator or arbitrators or umpire appointed by virtue of this act may require the production of such documents in the possession or power of either party as they or he may think necessary for determining the matters referred, and may examine the parties or their witnesses on oath:
- (13.) The costs of and consequent upon the reference shall be in the discretion of the arbitrator or arbitrators, or (in case the matters referred are determined by an umpire) of the umpire (*o*):
- (14.) Any submission to arbitration under the provisions of this act may be made a rule of any of the superior courts, on the application of any party thereto:
- (15.) The award of arbitrators or of an umpire under this act shall be final and binding on all parties to the reference (*p*).

(*m*) *Knowles & Son, Ltd. v. Bolton Corporation*, [1900] 2 Q. B. 253; approving *Warburton v. Haslingden L. B.* (1879), 48 L. J. Q. B. 451; and overruling *In re Mackenzie and Ascot Gas Co.* (1886), 17 Q. B. D. 114.

(*n*) *In re Yeaton Local Board and Yeaton Waterworks Co.* (1888), 41 Ch. D. 52.

(*o*) *Peake v. Finchley L. B.* (1887), 57 L. T. 882; *In re Chesterfield Corporation and Brampton L. B.* (1886), 50 J. P. 824.

(*p*) Final as to amount only, not as to liability: *Brierley Hill L. B. v. Pearsall* (1884), 9 App. Cas. 595.

181. All questions referable to arbitration under this act may, when the amount in dispute is less than twenty pounds, be determined at the option of either party before a court of summary jurisdiction, but the court may, if it thinks fit, require that any work in respect of which the claim of the local authority is made and the particulars of the claim be reported on to them by any competent surveyor, not being the surveyor of the local authority; and the court may determine the amount of costs incurred in that behalf, and by whom such costs or any part of them shall be paid.

Claims under twenty pounds may be referred to court of summary jurisdiction.

* * * * *

305. Whenever it becomes necessary for a local authority or any of their officers to enter examine or lay open any lands or premises for the purpose of making plans surveying measuring taking levels making keeping in repair or examining works, ascertaining the course of sewers or drains, or ascertaining or fixing boundaries, and the owner or occupier of such lands or premises refuses to permit the same to be entered upon examined or laid open for the purposes aforesaid or any of them, the local authority may, after written notice to such owner or occupier, apply to a court of summary jurisdiction for an order authorising the local authority to enter examine and lay open the said lands and premises for the purposes aforesaid or any of them.

Entry on lands for purposes of act.

If no sufficient cause is shown against the application the court may make an order accordingly, and on such order being made the local authority or any of their officers may, at all reasonable times between the hours of nine in the forenoon and six in the afternoon, enter examine or lay open the lands or premises mentioned in such order, for such of the said purposes as are therein specified, without being subject to any action or molestation for so doing: provided that, except in case of emergency, no entry shall be made or works commenced under this section unless at least twenty-four hours' notice of the intended entry, and of the object thereof, be given to the occupier of the premises intended to be entered.

* * * * *

308 (q). Where any person sustains any damage (r) by reason of the exercise of any of the powers of this act, in relation to any matter as to which he is not himself in default, full compensation (s) shall be made to such person by the local authority exercising such

Compensation in case of damage by local authority.

(q) *Vide ante*, p. 340.

(r) *Hall v. Mayor, &c. of Bristol* (1867), L. R. 2 C. P. 322; *Sellors v. Matlock Bath L. B.* (1885), 14 Q. B. D. 928; *Durrant v. Branksome U. D. C.*, [1897] 2 Ch. 291; *In re Bater and Birkenhead Corporation*, [1893] 2 Q. B. 77; *Walshaw v. Brighouse Corporation*, [1899] 2 Q. B. 286; *Barnett v. Eccles Corporation*, [1900] 2 Q. B. 423.

(s) *Cowper Essex v. Acton L. B.* (1889), 14 App. Cas. 153; *Utley v. Todmorden L. B.* (1874), 44 L. J. C. P. 19; *Roderick v. Aston L. B.* (1877), 5 Ch. D. 328; *Swanston v. Twickenham L. B.* (1879), 11 Ch. D. 838; *Hill v. Wallasey L. B.*, [1894] 1 Ch. 133; *Davis v. Witney U. D. C.* (1899), 63 J. P. 279; *R. v. Wallasey L. B.* (1869), L. R. 4 Q. B. 351; *Nutter v. Accrington L. B.* (1879), 4 Q. B. D. 375; *Burgess v. Northwich L. B.* (1880), 6 Q. B. D. 264.

powers; and any dispute as to the fact of damage or amount of compensation (*t*) shall be settled by arbitration in manner provided by this act, or if the compensation claimed does not exceed the sum of twenty pounds, the same may at the option of either party be ascertained by and recovered before a court of summary jurisdiction.

* * * * *

As to construction of incorporated acts.

316. In the construction of the provisions of any act incorporated with this act the term "the special act" includes this act, and, in the case of the Lands Clauses Consolidation Acts, 1845, 1860, and 1869, any order confirmed by parliament and authorising the purchase of lands otherwise than by agreement under this act; the term "the limits of the special act" means the limits of the district; and the urban or rural authority shall be deemed to be "the promoters of the undertaking," "the commissioners," or "the undertakers," as the case may be.

All penalties incurred under the provisions of any act incorporated with this act shall be recovered and applied in the same way as penalties incurred under this act.

* * * * *

Saving for water rights generally.

332. Nothing in this act shall be construed to authorise any local authority to injuriously affect any reservoir canal river or stream or the feeders thereof or the supply quality or fall of water contained in any reservoir canal river stream or in the feeders thereof, in cases where any body of persons or person would, if this act had not passed, have been entitled by law to prevent or be relieved against the injuriously affecting such reservoir canal river stream feeders or such supply quality or fall of water, unless the local authority first obtain the consent in writing of the body of persons or person so entitled as aforesaid (*u*).

* * * * *



THE PUBLIC HEALTH ACT, 1875 (SUPPORT OF SEWERS), AMENDMENT ACT, 1883.

46 & 47 VICT. c. 37.

An Act to amend the Public Health Act, 1875, and to make provision with respect to the support of public sewers and sewage works in mining districts. [25th August, 1883.]

BE it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

Short title and construction.

1. This act may be cited as the Public Health Act, 1875 (Support of Sewers), Amendment Act, 1883, and shall be construed as one with

(*t*) *Brierley Hill L. B. v. Pearsall* (1884), 9 App. Cas. 595; *Bradford L. B. v. Hopwood* (1858), 6 W. R. 818.

(*u*) Remedy is action, not compensation: *R. v. Darlington L. B.* (1865), 35 L. J. Q. B. 45; *Roberts v. Gwyrfai R. D. C.*, [1899] 1 Ch. 583.

the Public Health Act, 1875 (in this act called the principal act), as amended by the acts for the time being in force amending the same.

2. In this act,--

The expression "sanitary work" means any existing or future building or work constructed by or vested in or under the control of a local authority under the powers or for the purposes of so much of the principal act or of any general or local act or provisional order as relates to the construction or maintenance of any works of sewerage, drainage, sewage disposal, lighting, or water supply, and includes any fixtures, pipes, fittings, or apparatus connected with any such work, and belonging to or used by the local authority:

Interpretation.

The expression "support" includes vertical and lateral support:

The expression "sanitary act" means the act or provisional order under the authority of which a sanitary work has been or is constructed or is maintained, whether such act or order was passed and confirmed before or after the commencement of this act:

The expression "person" includes a body corporate.

3. The provisions of the Waterworks Clauses Act, 1847, sections eighteen to twenty-seven (both inclusive), with respect to mines, shall, in relation to any sanitary work of a local authority, be deemed to be incorporated with this act and with the sanitary act under the authority of which such sanitary work has been or is constructed or is maintained, with the following modifications (that is to say):--

Application of provisions of the Waterworks Clauses Act, 1847, 10 & 11 Vict. c. 17, with respect to mines, to sanitary works over mines.

- (1.) For the purposes of such incorporation the said provisions of the Waterworks Clauses Act, 1847, shall be construed as if the expression "the undertakers" referred to the local authority, and as if the expression "the special act" referred to such sanitary act and this act, and as if expressions relating to pipes, conduits, or other works referred to the sanitary work:
- (2.) The local authority, by or with any notice under the Waterworks Clauses Act, 1847, of willingness to treat for or make compensation, or of intention to prevent or interfere with the working of any mines, may specify and define the nature and extent of support (*x*) which they require to be left, and any such notice may extend to minerals beyond the distance of forty yards mentioned in the said act or to such less distance as the local authority think fit:
- (3.) As regards sanitary works existing at the passing of this act the local authority shall cause the survey and map referred to in section nineteen of the Waterworks Clauses Act, 1847, to be made within twelve months after the passing of this act:
- (4.) The amount of any compensation in respect of support for a sanitary work payable by a local authority under the provisions of the Waterworks Clauses Act, 1847, as incorporated with this act or the sanitary act, together with the costs of and incident to settling the same by arbitration or otherwise, shall be paid, charged, and borne in the same manner, and subject to the same powers and provisions as to borrowing

(*x*) *In re Corporation of Dudley* (1881), 8 Q. B. D. 86.

and otherwise, as is provided with respect to the expenses of the construction or maintenance of the sanitary work by the sanitary act:

- (5.) A local authority may from time to time make agreements with the owners, lessees, or occupiers of or the persons working any mine for compromising any claim made or to be made in respect of anything done or omitted before the passing of this act in relation to the matters in this act mentioned or otherwise for carrying into effect the purposes of this act in relation to the past or future working of mines.

The provisions of this act shall apply to every sanitary work as defined in this act, whether the land on, in, over, or under which such work is situate is or is not vested in or occupied by the local authority, and is or is not wholly or partially dedicated to the public as a street, highway, or public place.

Limitation
of right to
support for
sanitary
works over
mines.

4. Except as in this act provided, a local authority shall not by reason only of anything contained in the sanitary act under the authority of which a sanitary work has been or is constructed or maintained be deemed to have acquired or to be entitled to or to be bound to acquire or make compensation for any right of support for such sanitary work as against any person owning or working or being lessee or occupier of or entitled to work or otherwise interested in any mine; and nothing in such sanitary act shall be deemed to have subjected or to subject any such person to any liability to the local authority in respect of damage to a sanitary work caused in or consequent upon the working of any mines in a reasonable and proper manner.

Savings.

5. Nothing in this act shall be construed to repeal, invalidate, or affect any express enactment in a sanitary or other act with respect to rights of support for sanitary works, or any agreement made before the passing of this act with respect to such rights, or to affect any action, arbitration, or other legal proceedings concluded before or pending at the passing of this act.

Where any right of support has been acquired before the passing of this act by a local authority in respect of any sanitary work, and no compensation is at the passing of this act recoverable in respect of such right, nothing in this act shall be construed to apply to the work in respect of which such right has been acquired, or operate to deprive the local authority of such right or to entitle any person to any compensation in respect thereof, to which such person would not have been entitled if this act had not been passed.



THE LOCAL GOVERNMENT ACT, 1888.

51 & 52 VICT. c. 41.

An Act to amend the Laws relating to Local Government in England and Wales, and for other purposes connected therewith. [13th August, 1888.

* * * * *

65.—(1.) A county council may, from time to time, for the purpose of any of their powers and duties, including those which are to be executed through the standing joint committee, acquire, purchase, or take on lease, or exchange any lands or any easements or rights over or in land, whether situate within or without the county, and may acquire, hire, erect, and furnish such halls, buildings, and offices as they may from time to time require, whether within or without their county.

(2.) For the purpose of the purchase, taking on lease, or exchange of such lands, sections one hundred and seventy-six, one hundred and seventy-seven, and one hundred and seventy-eight of the Public Health Act, 1875, shall apply as if they were herein re-enacted, and in terms made applicable to the county council.

(3.) Where the county council, with the consent of the Local Government Board, sell any land, the proceeds of such sale shall be applied in such manner as the said Board sanction towards the discharge of any loan of the council, or otherwise, for any purpose for which capital may be applied by the council.

* * * * *

THE LOCAL GOVERNMENT ACT, 1894.

56 & 57 VICT. c. 73.

An Act to make further provision for Local Government in England and Wales. [5th March, 1894.

* * * * *

9.—(1.) For the purpose of the acquisition of land by a parish council the Lands Clauses Acts shall be incorporated with this act, except the provisions of those acts with respect to the purchase and taking of land otherwise than by agreement, and section one hundred and seventy-eight of the Public Health Act, 1875, shall apply as if the parish council were referred to therein. Powers for acquisition of and. 38 & 39 Vict. c. 55.

(2.) If a parish council are unable to acquire by agreement and on reasonable terms suitable land for any purpose for which they are authorised to acquire it, they may represent the case to the county council, and the county council shall inquire into the representation.

(3.) If on any such representation, or on any proceeding under the Allotments Acts, 1887 and 1890, a county council are satisfied that 50 & 51 Vict. c. 48. 53 & 54 Vict. c. 65.

suitable land for the said purpose of the parish council or for the purpose of allotments (as the case may be), cannot be acquired on reasonable terms by voluntary agreement, and that the circumstances are such as to justify the county council in proceeding under this section, they shall cause such public inquiry to be made in the parish, and such notice to be given both in the parish and to the owners, lessees, and occupiers of the land proposed to be taken as may be prescribed, and all persons interested shall be permitted to attend at the inquiry, and to support or oppose the taking of the land.

(4.) After the completion of the inquiry, and considering all objections made by any persons interested, the county council may make an order for putting in force, as respects the said land or any part thereof, the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.

(5.) If the county council refuse to make any such order, the parish council, or, if the proceeding is taken on the petition of the district council, then the district council, may petition the Local Government Board, and that board after local inquiry may, if they think proper, make the order, and this section shall apply as if the order had been made by the county council. Any order made under this subsection overruling the decision of the county council shall be laid before parliament by the Local Government Board.

(6.) A copy of any order made under this section shall be served in the prescribed manner, together with a statement that the order will become final and have the effect of an act of parliament, unless within the prescribed period a memorial by some person interested is presented to the Local Government Board praying that the order shall not become law without further inquiry.

(7.) The order shall be deposited with the Local Government Board, who shall inquire whether the provisions of this section and the prescribed regulations have been in all respects complied with: and if the Board are satisfied that this has been done, then, after the prescribed period—

(a) If no memorial has been presented, or if every such memorial has been withdrawn, the board shall, without further inquiry, confirm the order:

(b) If a memorial has been presented, the Local Government Board shall proceed to hold a local inquiry, and shall, after such inquiry, either confirm, with or without amendment, or disallow the order:

(c) Upon any such confirmation the order, and if amended as so amended, shall become final and have the effect of an act of parliament, and the confirmation by the Local Government Board shall be conclusive evidence that the requirements of this act have been complied with, and that the order has been duly made, and is within the powers of this act.

(8.) Sections two hundred and ninety-three to two hundred and ninety-six, and subsections (1) and (2) of section two hundred and ninety-seven of the Public Health Act, 1875, shall apply to a local inquiry held by the Local Government Board for the purposes of this

section, as if those sections and subsections were herein re-enacted, and in terms made applicable to such inquiry.

(9.) The order shall be carried into effect, when made on the petition of a district council, by that council, and in any other case by the county council.

(10.) Any order made under this section for the purpose of the purchase of land otherwise than by agreement shall incorporate the Lands Clauses Acts and sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, with the necessary adaptations, but any question of disputed compensation shall be dealt with in the manner provided by section three of the Allotments Act, 1887, and provisoes (a), (b), and (c) of subsection (4) of that section are incorporated with this section and shall apply accordingly; provided that in determining the amount of disputed compensation the arbitrator shall not make any additional allowance in respect of the purchase being compulsory.

8 & 9 Vict.
c. 20.

(11.) At any inquiry or arbitration held under this section the person or persons holding the inquiry or arbitration shall hear any authorities or parties interested by themselves or their agents, and shall hear witnesses, but shall not, except in such cases as may be prescribed, hear counsel or expert witnesses.

(12.) The person or persons holding a public inquiry for the purposes of this section on behalf of a county council shall have the same powers as an inspector or inspectors of the Local Government Board when holding a local inquiry; and section two hundred and ninety-four of the Public Health Act, 1875, shall apply to the costs of inquiries held by the county council for the purpose of this section as if the county council were substituted for the Local Government Board.

(13.) Subsection (2) of section two, if the land is taken for allotments, and, whether it is or is not so taken, subsections (5), (6), (7), and (8) of section three of the Allotments Act, 1887, and section eleven of that act, and section three of the Allotments Act, 1890, are incorporated with this section, and shall, with the prescribed adaptations, apply accordingly.

50 & 51 Vict.
c. 48.
53 & 54 Vict.
c. 65.

(14.) Where the land is acquired otherwise than for allotments, it shall be assured to the parish council; and any land purchased by a county council for allotments under the Allotments Acts, 1887 and 1890, and this act, or any of them, shall be assured to the parish council, and in that case sections five to eight of the Allotments Act, 1887, shall apply as if the parish council were the sanitary authority.

(15.) Nothing in this section shall authorise the parish council to acquire otherwise than by agreement any land for the purpose of any supply of water, or of any right of way.

(16.) In this section the expression "allotments" includes common pasture where authorised to be acquired under the Allotments Act, 1887.

(17.) Where, under the Allotments Act, 1890, the Allotments Act, 1887, applies to the purchase of land by the county council, that act shall apply as amended by this section, and the parish council shall

have the like power of petitioning the county council as is given to six parliamentary electors by section two of the Allotments Act, 1890.

(18.) This section shall apply to a county borough with the necessary modifications, and in particular with the modification that the order shall be both made and confirmed by the Local Government Board and shall be carried into effect by the council of the county borough.

(19.) The expenses of a county council incurred under this section shall be defrayed in like manner as in the case of a local inquiry by a county council under this act.

* * * * *

THE PUBLIC HEALTH ACTS AMENDMENT ACT, 1907.

7 EDW. 7, c. 53.

* * * * *

2.—(1.) This Act shall be construed as one with the Public Health Acts.

* * * * *

Compensation,
how
determined.

10. Where any compensation, costs, damages or expenses is or are by this Act directed to be paid, and the method for determining the amount thereof is not otherwise provided for, such amount shall in case of dispute be ascertained in the manner provided by the Public Health Acts.

* * * * *

PART II.

* * * * *

Power to
vary position
or direction
and to fix
beginning
and end of
new streets.

17.—(1.) The local authority may, on the deposit of a plan and sections of a new street in pursuance of a byelaw in force in the district, by order vary the intended position, direction or termination, or level of the new street so far as is necessary for the purpose of securing more direct, easier, or more convenient means of communication with any other street or intended street or for the purpose of securing an adequate opening at either end of the new street, or of securing compliance with any enactment or byelaw in force in the district for the regulation of streets and buildings.

The local authority may also by their order fix the points at which the new street shall be deemed to begin or end, and the limits of the new street as determined by the points so fixed shall have effect for the purposes of the Public Health Acts, 1875 to 1907, and of any byelaws made under those Acts and in force within the district.

(2.) The powers of the local authority under this section shall not be exerciseable in any case in which it is shown, to their satisfaction, that compliance with their order will entail the purchase of additional lands by the owner of the lands on which the new street is intended to be laid out, or the execution of works elsewhere than on those lands.

(3.) Where the local authority make an order under this section a person shall not lay out or construct a new street otherwise than in compliance with the order. If any person acts in contravention of this provision, he shall be liable to a penalty not exceeding five pounds, and to a daily penalty not exceeding forty shillings.

(4.) The local authority shall pay compensation to any person injuriously affected by the exercise by the local authority of their powers under this section.

* * * * *

22. The local authority may require the corner of any building intended to be erected at the corner of two streets to be rounded off or splayed off to the height of the first storey or to the full height of the building, and to such extent otherwise as they may determine and for any loss which may be sustained through the exercise of the powers by this section conferred upon the local authority they shall pay compensation.

Buildings at
corner of
streets.

* * * * *

28. The local authority may remove, appropriate, use, and dispose of all old materials existing in any street at the time of the execution by the local authority of any works in such street unless the owner of buildings and lands in such street within forty-eight hours after notice so to do served on them by the surveyor remove such materials or their respective proportions thereof, and the local authority shall allow such sum as may be the reasonable value thereof to such owners for any materials which have been used or removed by the local authority, and in case of dispute the amount to be allowed shall be settled in the manner provided by the Public Health Act, 1875, with respect to compensation for damage sustained by reason of the exercise of any powers of that Act.

Removal of
materials in
streets.

* * * * *

33. Nothing in this Part or in any byelaws to be made under any enactment extended by this Part shall apply to a building (other than a dwelling-house) belonging to a railway company, or to any company or other public body authorised to construct, maintain, or improve a harbour, pier or dock, or to the owners of any canal or inland navigation, and used by the company, public body, or owners as a part of or in connection with their railway, harbour, pier, dock, canal or inland navigation.

Exemption
of buildings
of railway
companies
and others.

* * * * *

95. The powers of a local authority under sections one hundred and seventy-five and one hundred and seventy-six of the Public Health Act, 1875, shall extend to highway purposes, and notwithstanding anything in section one hundred and seventy-five of the Public Health Act, 1875, or any general provision in any local Act, any lands acquired by a local authority and not required for the purposes for which those lands have been acquired may be appropriated for any purpose approved by the Local Government Board, subject, nevertheless, to any special covenant or condition affecting the use of the lands attached thereto at the time of the purchase by the local authority, or to any special provision affecting the use of the lands contained in any local Act: Provided that the local authority

Extension
and amend-
ment of
s. 175 and
s. 176 of
38 & 39 Vict.
c. 55.

shall not, on any lands so appropriated, create or permit any nuisance; and that the local authority shall not, on any such lands, sink any well for the public supply of water, or construct any cemetery, burial ground, destructor, station for generating electricity, sewage farm, or hospital for infectious disease, unless after local inquiry and consideration of any objections made by persons affected, the Local Government Board, subject to such conditions as they think fit, authorise the work or construction.

Nothing in this section shall affect any rights acquired before the commencement of this section under any judgment or order of a court of competent jurisdiction, or under any agreement in writing, but if a dispute, one of the parties to which is a local authority, arises under such an agreement as to any such right, the dispute shall, if either party so require, be settled by the Local Government Board as if it were a doubt or difference within the meaning of section three hundred and four of the Public Health Act, 1875, and the Local Government Board may for that purpose deal by Order with any matters which may be dealt with by an Order or Provisional Order under the said section.



THE METROPOLITAN PAVING ACT, 1817 (*y*).

57 GEO. 3, C. XXIX.

An Act for better paving, improving, and regulating the Streets of the Metropolis, and removing and preventing Nuisances and Obstructions therein. [16th June, 1817.]

* * * * *

Streets may
be widened
and improved
with consent
of owners.

80. And be it further enacted, that for the improvement of the streets and public places in the parochial or other districts within the jurisdiction of this act, and for the public advantage, it shall and may be lawful to and for the commissioners (*z*) or trustees, or other persons having the control of the pavements of any parochial or other district, from time to time, and at all times hereafter, to alter, widen, turn, or extend any of the streets or other public places within any such parochial or other district (except turnpike roads), and to lengthen and continue or open the same from the sides or ends of any streets or public places within any parochial or other district, into any other street or public place within such or any other parochial or other district, and to raise, level, lower, drain, ballast, gravel, or pave such new part or parts of any such streets or public places so altered, widened, extended, opened, or lengthened as aforesaid; and that if

(*y*) Commonly known as Michael Angelo Taylor's Act. *Vide ante*, p. 350. As to how far impliedly repealed by subsequent Metropolitan Acts, see *Fortescue v. Vestry of St. Matthew's, Bethnal Green*, [1891] 2 Q. B. 170; *Summers v. Holborn Board of Works*, [1893] 1 Q. B. 612; *Wyatt v. Gems*, [1893] 2 Q. B. 225; *Keep v. Vestry of St. Mary's, Newington*, [1894] 2 Q. B. 524.

(*z*) The powers under this Act in the City of London, formerly vested in the Commissioners of Sewers, have been transferred to the Corporation (acting through the Common Council) by the City of London Sewers Act, 1897.

any houses, walls, buildings, lands, tenements, and hereditaments, or any part thereof, shall be adjudged by the said commissioners or trustees, or other persons as aforesaid, to project into, obstruct, or prevent them from so altering, turning, widening, extending, lengthening, continuing, or opening the said streets or public places within the said parochial or other district, and that the possession, occupation, and purchase of such houses, walls, buildings, lands, tenements, or hereditaments will be necessary for that purpose, it shall and may be lawful to and for the said commissioners or trustees, or other persons as aforesaid, and they shall have full power and authority to treat, contract, and agree, or to employ any person or persons to treat, contract, and agree with the several owner or owners, occupier or occupiers of all such houses, walls, buildings, lands, and hereditaments, of whatsoever nature, tenure, kind, or quality, for the purposes aforesaid, and to pay for the same such sum and sums of money as shall be agreed upon by the said commissioners or trustees, or other persons as aforesaid, and the owner or owners, occupier or occupiers thereof, out of the money to arise and be raised and to be received by them, either by virtue of any local act or acts of parliament relating to such parochial or other districts, or of this act, and to pull down, use, sell, or dispose of such houses, walls, and buildings, and the materials thereof, and lay the sites thereof, and also such other lands, tenements, or hereditaments, or so much thereof as they the said commissioners or trustees, or other persons as aforesaid, shall think proper, into the said streets or other public places; and all such new parts of such streets or public places, and the owners and occupiers of houses and buildings, messuages, and other hereditaments therein and adjoining thereto, shall be subject and liable to all the rates, assessments, powers, provisions, orders, clauses, and things to be made by virtue of or contained in any local act or acts of parliament relating to such parochial or other district, or by virtue of or contained in this act, in the same manner as the present streets and public places included in any such local act or acts, or within the jurisdiction of this act, and the owners and occupiers of houses or buildings and messuages or other hereditaments therein and adjoining thereto.

81. And be it further enacted, that it shall and may be lawful for all bodies politic, corporate, or collegiate, corporations aggregate or sole, tenants for life or in tail, or others having a partial or qualified interest or estate in any houses, lands, tenements, or hereditaments, husbands, femmes covert, guardians, trustees, and feoffees in trust for charities or other purposes, committees, executors, or administrators, and all other persons whomsoever, not only on behalf of themselves, and their respective heirs, executors, administrators, and successors, but also on behalf of all persons entitled in reversion or remainder expectant on an estate tail, and on behalf of all persons entitled in reversion or remainder expectant on an estate for life, or other less estate, or by way of executory devise, in case such persons shall be incapacitated or decline to treat, and on behalf of their respective wives and cestuique trusts, whether infants, issue unborn, lunatics,

Corporate or
collegiate
bodies and
incapacitated
persons
enabled to
sell.

idiots, femmes covert, or others, and for all and every other person or persons whomsoever who are and shall be seised, possessed of, or interested in any such houses, lands, tenements, or hereditaments, to treat and agree with the said commissioners or trustees, or other persons having the control of the pavements in the streets or public places in any parochial or other district within the jurisdiction of this act as aforesaid, for the absolute sale thereof, and to sell and convey to the said commissioners or trustees, or other persons as aforesaid by feoffment, lease and release, or bargain and sale, by deed indented and enrolled in any of his Majesty's Courts of Record at Westminster, for such valuable consideration as shall be *bonâ fide* agreed upon for such houses, lands, tenements, or hereditaments as shall be adjudged necessary and convenient for the purposes aforesaid; and that all contracts, agreements, sales, or conveyances which shall be *bonâ fide* made for the purpose aforesaid shall be good and effectual in the law to all intents and purposes; anything to the contrary thereof in anywise notwithstanding.

When parties refuse or are unable to treat, &c., a precept to be issued for impannelling a jury,

82. And be it further enacted, that if any body or bodies politic, corporate, or collegiate, or any other person or persons seised or possessed of or interested in any such houses, buildings, lands, tenements, or hereditaments as aforesaid, shall refuse to treat or agree, or shall not agree, or by reason of absence or disability cannot agree with the said commissioners or trustees or other persons having the control of the pavements of any streets or public places in any parochial or other district within the jurisdiction of this act, or with any person or persons authorised by them, for the sale and conveyance of their respective estates and interest therein, or cannot be found or known, or shall not produce and evince a clear title to the premises they are in possession of, or to the interest they claim therein, to the satisfaction of the said commissioners or trustees or other persons as aforesaid, or of the person or persons so authorised by them, then and in every such case it shall be lawful for the said commissioners or trustees or other persons as aforesaid, and they are hereby required to issue a warrant or warrants, precept or precepts, directed to the sheriff or sheriffs, or bailiff or other proper officer of the city, borough, or county wherein the premises shall respectively lie or be, who is hereby authorised, directed, and required accordingly to impanel, summon, and return a competent number of substantial and disinterested persons qualified to serve on juries, not less than forty-eight nor more than seventy-two; and out of such persons so to be impannelled, summoned, and returned, a jury of twelve men shall be drawn by some indifferent person to be by the said commissioners or trustees or other persons as aforesaid appointed, in such manner as juries for the trial of issues joined in his Majesty's courts at Westminster are by an act made in the third year of the reign of his late Majesty King George the Second, intituled "An Act for the better Regulation of Juries," are directed to be drawn; which persons so to be impannelled, summoned, and returned as aforesaid are hereby required to come and appear before the justices of the peace for the city, borough, or county wherein the premises shall lie or be, at some

who are to be drawn as 3 Geo. 2, c. 25, directs.

court of general or quarter sessions of the peace to be holden in and for the same city, borough, or county, or at some adjournment thereof, as in such warrant or warrants, precept or precepts, shall be directed and appointed, and to attend such court of general or quarter sessions from day to day until discharged by the said court; and all parties concerned shall and may have their lawful challenges against any of the said jurymen, but shall not be at liberty to challenge the array; and the said justices are hereby authorised and empowered, by precept or precepts, from time to time as occasion shall require, to call before them all and every person and persons whomsoever who shall be thought proper and necessary to be examined as a witness or witnesses on his, her, or their oath or oaths, touching or concerning the premises; and the said justices, if they think fit, shall and may, on the application of either party, likewise authorise the said jury to view the place or places or premises in question, in such manner as they shall direct; and the said justices shall have power to adjourn such court from day to day as occasion shall require, and to command such jury, witnesses, and parties to attend until all such affairs for which they were summoned shall be concluded; and the said jury upon their oaths (which oaths, as also the oaths of such person or persons as shall be called upon to give evidence, the said justices are hereby empowered and required to administer) shall inquire of the value of such houses, buildings, lands, tenements, or hereditaments, and of the proportionable value of the respective estates and interest of all and every person and persons seised or possessed thereof, or interested therein, or of or in any part or parts thereof. and shall assess and award the sum or sums of money to be paid to such person or persons, party or parties respectively, for the purchase of such houses, buildings, lands, tenements, or hereditaments, and of such respective estates and interest therein, and also for goodwill, improvements, or any injury or damage whatsoever that may affect any such person or persons, party or parties, either as leaseholders or tenants at will, provided that such goodwill shall be estimated by what, in the opinion of such jury, the same would have been worth in case the improvements intended by this act had not been in contemplation; and the said justices shall and may give judgment for such sum or sums of money so to be assessed; which verdict or verdicts, and the judgment and judgments, determination and determinations thereupon (notice in writing being given to the person or persons interested or claiming so to be, at least fourteen days before the time of the meeting of the said justices as aforesaid and jury, by leaving such notice at the dwelling house of such person and persons, or at his, her, or their last usual place or places of abode, or with some tenant or occupier of the premises respectively intended to be valued), shall be binding and conclusive to all intents and purposes whatsoever against all bodies politic, corporate, and collegiate, and all and every person and persons claiming any estate, right, title, trust, use, or interest in, to, or out of such houses, buildings, lands, tenements, or hereditaments and premises in possession, reversion, remainder, or expectancy, as well infants and issue unborn, lunatics, idiots, and femmes covert, and persons under any other legal incapacity

Jurymen may be challenged.

Justices, on the application of either party, may direct a view of the premises.

Jury to assess the value on oath.

Verdict of the jury, &c., to be final, previous notice being given to the parties interested.

If the sum assessed shall not exceed the sum offered,

the costs of such assessment, &c. to be paid by such body politic, &c.

and the commissioners, &c. may retain the same out of the sum so assessed.

Justices empowered to impose fines for non-attendance.

or disability, as all other cestuique trusts, their, his, and her heirs, successors, executors, and administrators, and against all other persons whomsoever; and the said verdicts, judgments, and determinations, and all other proceedings of the said justices and juries, so to be made, given, and pronounced as aforesaid, shall be fairly written on parchment, and signed by the clerk of the peace for the time being of the city, borough, or county wherein the premises shall respectively lie or be; and in case it shall so happen that the sum or sums of money so to be assessed and awarded in consequence of such refusal to treat and agree as aforesaid, as the value of such houses, buildings, lands, tenements, or hereditaments, or as such proportional value as aforesaid, and as the recompense and satisfaction to be made for the injury or damage sustained as before mentioned respectively, shall not exceed the sum or sums of money which the said commissioners or trustees, or other persons as aforesaid, or any person or persons authorized by them, shall have previously offered to pay as and for such value, recompense, and satisfaction, then and in every such case all the reasonable costs, charges, and expenses of causing and procuring such value and recompense to be assessed and awarded as aforesaid, and also assessing and awarding the same, shall be borne and paid by the body or bodies politic, corporate, or collegiate, or other person or persons so seised or possessed of or interested in such houses, buildings, lands, tenements, or hereditaments, and so refusing to treat and agree as before mentioned respectively; and the said commissioners or trustees, or other persons as aforesaid, are hereby authorized and empowered to deduct and retain the said costs, charges, and expenses out of the sum or sums of money so to be assessed or awarded as aforesaid, or out of any part thereof: provided always, that in all cases where any person or persons shall by reason of absence have been prevented from treating about such recompense or satisfaction as aforesaid, such costs and charges shall be borne and paid by the said commissioners or trustees, or other persons as aforesaid, in manner aforesaid.

83. And be it further enacted, that the said justices shall have power from time to time to impose any reasonable fine, not exceeding the sum of twenty pounds, on such sheriff or bailiff, or his deputy or deputies, bailiffs or agents respectively, making default in the premises, and on any of the persons who shall be summoned and returned on any such jury or juries, and shall not appear, without sufficient excuse, or appearing shall refuse to be sworn on the said jury or juries, or being so sworn shall not give his or their verdict; and also on any person or persons who shall be summoned to give evidence touching any of the matters aforesaid, and shall not attend, or attending shall refuse to be sworn, or to affirm, or who shall refuse to give his, her, or their evidence, and on any person or persons who shall in any other manner wilfully neglect his, her, or their duty in the premises, contrary to the true intent and meaning of this act; and from time to time to levy such fine or fines, by order of the said justices, by distress and sale of the offender's goods and chattels, together with the reasonable charges of every such distress and sale, returning the overplus (if any) to the owner or owners; and that a

copy of the order of the said justices, signed by the clerk of the peace for the time being of the city, borough, or county wherein the premises shall lie or be, as the case shall require, shall respectively be sufficient authority to the person or persons therein to be appointed, and to every other person acting or aiding and assisting therein, to make such distress and sale; and all such fines shall be paid to the treasurer or treasurers of the commissioners or trustees, or other persons as aforesaid having the control of the pavements in the parochial or other district wherein such premises shall lie or be, or to such other person or persons as they may respectively from time to time appoint.

84. And be it further enacted, that if any money shall be agreed or awarded to be paid for any lands, buildings, tenements, or hereditaments, or for any other matter, right, or interest, of what nature or kind soever, purchased, taken, or used by virtue of the powers of this act for the purpose thereof, which shall belong to any corporation, feme covert, infant, lunatic, or person or persons under any other disability or incapacity, such money shall, in case the same shall amount to the sum of two hundred pounds, with all convenient speed be paid into the Bank of England in the name and with the privity of the Accountant General of the High Court of Chancery, to be placed to his account there *ex parte* the said commissioners or trustees, or other persons having the control of the pavements of the streets or public places in the parochial or other districts within the jurisdiction of this act, wherein such lands, buildings, tenements, or hereditaments, shall be or lie as aforesaid, together with the name or names of such person or persons as the said commissioners or trustees or other persons as aforesaid, by writing signed by them, shall direct and appoint, to the intent that such money shall be applied, under the direction and with the approbation of the said court, to be signified by an order made upon a petition to be preferred in a summary way by the person or persons who would have been entitled to the rents and profits of the said lands, buildings, tenements, or hereditaments, in the purchase of land tax, or discharge of any debt or debts, or such other incumbrance or part thereof as the said court shall authorize to be paid, affecting the same lands, buildings, tenements, or hereditaments, or affecting other lands, buildings, tenements, or hereditaments standing settled therewith to the same or the like uses, intents, or purposes; or where such money shall not be so applied, then the same shall be laid out and invested, under the like direction and approbation of the said court, in the purchase of other messuages, lands, buildings, tenements, or hereditaments, which shall be conveyed and settled to, for, and upon such and the like uses, trusts, intents, and purposes, and in the same manner, as the messuages, lands, buildings, tenements, and hereditaments which shall be so purchased, taken, or used as aforesaid stood settled or limited, or such of them as at the time of making such conveyance and settlement shall be existing undetermined and capable of taking effect; and in the meantime and until such purchase shall be made, the said money shall, by order of the Court of Chancery, upon application thereto, be invested by the

Application
of compensa-
tion where
exceeding
200*l*.

said Accountant General, in his name, in the purchase of three pounds per centum consolidated or three pounds per centum reduced bank annuities; and in the meantime and until the said bank annuities shall be ordered by the said court to be sold for the purposes aforesaid, the dividends and annual produce of the said consolidated or reduced bank annuities shall from time to time be paid, by order of the said court, to the person or persons who would for the time being have been entitled to the rents and profits of the said lands, buildings, tenements, and hereditaments so hereby directed to be purchased, in case such purchase or settlement were made.

Application where the compensation does not exceed 200*l.* nor less than 20*l.*

85. Provided always, and be it further enacted, that if any money so agreed or awarded to be paid for any lands, buildings, tenements, or hereditaments, or for any other matter, right, or interest, of what nature or kind soever, purchased, taken, or used for the purposes aforesaid, and belonging to any corporation, or to any person or persons under disability or incapacity as aforesaid, shall be less than the sum of two hundred pounds, and shall exceed the sum of twenty pounds, then and in all such cases the same shall, at the option of the person or persons for the time being entitled to the rents and profits of the hereditaments so purchased, taken, or used, or of his, her, or their guardian or guardians, committee or committees, in case of infancy or lunacy, to be signified in writing under their respective hands, be paid into the bank in the name and with the privy of the said Accountant General of the High Court of Chancery, and be placed to his account as aforesaid, in order to be applied in manner herein-before directed; or otherwise the same shall be paid, at the like option, to two trustees, to be nominated by the person or persons making such option, and approved of by the said commissioners or trustees or other persons as aforesaid (such nomination and approbation to be signified in writing under the hands of the nominating and approving parties), in order that such principal money, and the dividends arising thereon, may be applied in any manner herein-before directed, so far as the case may be applicable, without obtaining or being required to obtain the direction or approbation of the Court of Chancery.

Application where the money is less than 20*l.*

86. Provided also, and be it further enacted, that where such money so agreed or awarded to be paid as next before mentioned shall be less than twenty pounds, then and in all such cases the same shall be applied to the use of the person or persons who would for the time being have been entitled to the rents and profits of the hereditaments and premises so purchased, taken, or used for the purposes of this act, in such manner as the said commissioners or trustees, or other persons as aforesaid, shall think fit; or in case of infancy or lunacy, then to his, her, or their guardian or guardians, committee or committees, to and for the use and benefit of such person or persons so entitled respectively.

On payment of the purchase money premises to vest in commissioners, &c.

87. And be it further enacted, that upon payment of any sum or sums so agreed or awarded to the party or parties to whom the same shall be so awarded, or upon the deposit of the same in the Bank of England in manner by this act directed (as the case may be), the

said lands, tenements, and hereditaments, in respect whereof the same shall have been so paid or deposited as aforesaid, shall vest in the commissioners or trustees, or other persons as aforesaid for the time being, in manner and for the purposes aforesaid, who shall be deemed in law to be in the actual possession thereof, to all intents and purposes whatsoever, freed and discharged from all former and other estates, rights, titles, interests, claims, and demands whatsoever.

88. Provided always, and be it further enacted, that where any question shall arise touching the title of any person to any money to be paid into the Bank of England in the name and with the privy of the Accountant General of the Court of Chancery, in pursuance of this act, for the purchase of any lands, tenements, or hereditaments, or of any estate, right, or interest in any lands, tenements, or hereditaments to be purchased in pursuance of this act, or to any bank annuities to be purchased with any such money, or the dividends or interest of any such bank annuities, the person or persons who shall have been in possession of such lands, tenements, or hereditaments, at the time of such purchase, and all persons claiming under such person or persons, or under the possession of such person or persons, shall be deemed and taken to have been lawfully entitled to such lands, tenements, or hereditaments according to such possession, until the contrary shall be shown to the satisfaction of the said Court of Chancery; and the dividends or interest of the bank annuities to be purchased with such money, and also the capital of such bank annuities, shall be paid, applied, and disposed of accordingly, unless it shall be made appear to the said court that such possession was a wrongful possession, and that some other person or persons was or were lawfully entitled to such lands, tenements, or hereditaments, or to some estate or interest therein.

89. Provided also, and be it further enacted, that where by reason of any disability or incapacity of the person or persons or corporation entitled to any lands, tenements, or hereditaments, to be purchased, or purchased under the authority of this act, the purchase money for the same shall be required to be paid into the Court of Chancery, and to be applied in the purchase of other lands, tenements, or hereditaments, to be settled to the like uses in pursuance of this act, it shall be lawful for the said Court of Chancery to order the expenses of all purchases from time to time to be made in pursuance of this act, or so much of such expenses as the said court shall deem reasonable, to be paid by the said commissioners or trustees or other persons as aforesaid, who shall from time to time pay such sums of money for such purposes as the said court shall direct (a).

90. And be it further enacted, that every tenant at will or lessee for a year, or any other person or persons in possession of any such houses, buildings, lands, tenements, and hereditaments, or any part thereof, which shall be purchased by virtue of the purposes of this act, and who shall have no greater interest in the premises than as tenant at will or lessee for a year, or from year to year, shall deliver

Where any question shall arise touching the title to money to be paid, the person who shall be in possession of the lands, &c. at the time of such purchase shall be deemed entitled thereto according to such possession unless, &c.

The Court of Chancery may order reasonable expenses of purchases to be paid by the commissioners, &c.

Tenants at will, &c. to deliver possession on six months' notice.

up the possession of such premises to the said commissioners or trustees, or other persons as aforesaid having the control of the pavements in the streets or public places in the parochial or other division within the jurisdiction of this act, wherein such houses, buildings, lands, tenements, and hereditaments,* or to such person or persons as the said commissioners or trustees or other persons as aforesaid shall appoint to take possession of the same, upon having six calendar months' notice to quit such possession from the said commissioners or trustees or other persons as aforesaid, or from the person or persons so authorized by them; and such person or persons in possession shall at the end of the said six calendar months, whether such notice be given with reference to the time or times of such tenants holding or not, or so soon as he, she, or they shall be required, peaceably and quietly deliver up the possession of the said premises to the said commissioners or trustees, or other persons as aforesaid or the person or persons authorized by the said commissioners or trustees or other persons as aforesaid to take possession thereof; and in case any such tenant should be compelled to quit before the expiration of his or her term in any such premises, then and in such case the said commissioners or trustees, or other persons as aforesaid, shall and they are hereby required to make satisfaction and compensation for the loss or damage which he or she shall or may sustain thereby; and in case any difference or dispute shall arise as to the amount of such satisfaction or compensation, the same shall or may be determined, settled, and ascertained by a jury, in such and the like manner as the sum or sums of money to be paid for the purchase of any lands, tenements, or hereditaments, is herein directed to be determined, settled, and ascertained; and that in case any such person or persons so in possession as aforesaid shall refuse to give such possession as aforesaid, it shall and may be lawful to and for the said commissioners or trustees, or other persons as aforesaid, to issue their precept or precepts to the sheriff or sheriffs, or bailiff, or other proper officer of the city, borough, or county wherein such parochial or other district shall be situate, to deliver possession of the said premises to such person or persons as shall in such precept or precepts be nominated to receive the same; and the said sheriff or sheriffs or bailiff, and every other proper officer, is hereby authorized and required to deliver such possession accordingly of the said premises, and to levy such costs as shall accrue from the issuing and execution of such precept or precepts on the person or persons so refusing to give possession as aforesaid, by distress and sale of his, her, or their goods.

Mortgagees,
on tender of
principal and
interest, to
convey;

91. And be it further enacted, that all and every person and persons who shall have any mortgage or mortgages on such houses, buildings, lands, tenements, and hereditaments, not being in possession thereof by virtue of such mortgage or mortgages, shall on the tender of the principal money and interest due thereon, together with the amount of six calendar months' interest on the said principal, by the said commissioners or trustees, or other persons having the control of the pavements in the streets or public places in such parochial or other district within the jurisdiction of this act, wherein the said houses,

buildings, lands, tenements, and hereditaments shall lie or be as aforesaid, or by such person or persons as they shall appoint, immediately convey, assign, and transfer such mortgage or mortgages to the said commissioners or trustees or other persons as aforesaid, or to such person or persons as they shall appoint; or in case such mortgagee or mortgagees shall have notice in writing from the said commissioners or trustees or other persons as aforesaid, or from such person or persons as they shall appoint, that they will pay off and discharge the principal money and interest which shall be due on the said mortgage or mortgages at the end or expiration of six calendar months, to be computed from the day of giving such notice, that then at the end of the said six calendar months, on payment of the principal and interest so due, such mortgagee or mortgagees shall convey, assign, and transfer his, her, or their interest in the premises to the said commissioners or trustees or other persons as aforesaid, or to such person or persons as shall be appointed in trust for them; and in case the mortgagee or mortgagees shall refuse to convey and assign as aforesaid on such tender or payment, that then all interest on every such mortgage shall from thenceforth cease and determine.

on refusal,
interest to
cease.

92. Provided always, and be it further enacted, that in case the sum due upon any such mortgage or mortgages, with all interest due thereon, shall amount to more than the real value of the premises, to be ascertained as directed by this act, then the said commissioners or trustees or other persons as aforesaid shall not be liable to pay to the mortgagee or mortgagees more than such real value of such premises, so ascertained as aforesaid.

The mort-
gages not
to be paid
more than
the real
value of
premises.

93. And be it further enacted, that the conveyance of any such estate or interest of any feme covert to the said commissioners or trustees or other persons as aforesaid for the time being, or any five or more of them, or any person or persons in trust for them, by indenture or indentures of bargain and sale, sealed and delivered by such feme covert in the presence of and attested by two credible witnesses, and duly acknowledged, and to be enrolled in the High Court of Chancery within six calendar months after the making thereof, shall as effectually and absolutely convey the estate and interest of such feme covert in the premises as any fine or fines, recovery or recoveries, would or could do, if levied or suffered thereof in due form of law; and further, that all bargains and sales whatsoever to be made of any such houses, buildings, lands, tenements, and hereditaments, as shall be purchased by the commissioners or trustees or other persons as aforesaid for the time being, by virtue and for the purposes of this act, and enrolled as aforesaid, shall have the like force, effect, and operation in law, to all intents and purposes, as any fine or fines, recovery or recoveries whatsoever would have had if levied or suffered by the bargainer or bargainers, or any person or persons seised of or entitled to any estate or interest in the premises in trust for such bargainer or bargainers, in any manner or form whatsoever.

Bargains and
sales to have
the force of
fines and
recoveries.

94. And be it further enacted, that upon payment of the principal money and interest due on any mortgage as aforesaid into the Bank

Upon pay-
ment of prin-
cipal and

interest into the bank, premises to vest in the commissioners, &c.

Monies to be paid or tendered before any use made of the premises.

Estates may be sold, the persons of whom they were bought having the first offer.

of England, at the end of six calendar months from the day of giving such notice as aforesaid, for the use of the mortgagee or mortgagees, the cashier or cashiers of the bank shall give a receipt or receipts for the said money, in like manner as is hereinbefore directed in cases of other payments into the bank; and thereupon all the estate, right, title, interest, use, trust, property, claim, and demand of the said mortgagee or mortgagees, and of all and every person or persons in trust for him, her, or them, shall vest in the said commissioners or trustees or other persons as aforesaid, and they shall be deemed to be in the actual possession of the premises comprised in such mortgage or mortgages, to all intents and purposes whatsoever.

95. And be it further enacted, that all sums of money, or other consideration, recompense or satisfaction, to be paid or made pursuant to any such agreement or verdict as aforesaid, or in discharge of any such mortgage, shall be paid or tendered to the party or parties entitled to the same, or paid into the Bank of England as aforesaid, before the said commissioners or trustees or other persons as aforesaid, or any person or persons authorized by them, shall proceed to pull down any house or houses, or other erections or buildings comprised in or affected by such agreement, verdict, or mortgage respectively, or to use the ground for any of the purposes before mentioned in this act.

96. And be it further enacted, that it shall and may be lawful to and for the said commissioners or trustees or other persons as aforesaid, from time to time absolutely to sell and dispose of all or any of the freehold or leasehold estates, lands, houses, hereditaments, and premises, which shall hereafter be conveyed to them in pursuance of this act or otherwise, provided the said freehold or leasehold estates, lands, houses, hereditaments, and premises so purchased are first offered (b) for sale to the respective person or persons of or from whom the premises respectively were purchased by or on behalf of the said commissioners or trustees or other persons as aforesaid; and if such person or persons respectively shall not then and thereupon agree (except with respect to and on account of the price thereof as herein-after mentioned), or shall refuse (except with respect to and on account of the price thereof) to purchase the same respectively, an affidavit shall be made and sworn before a master in the High Court of Chancery, or before one of his Majesty's justices of the peace for the city, borough, or county wherein such parochial or other district shall be situate (who are hereby respectively empowered and directed to take the same), by some person or persons uninterested in the said freehold or leasehold estates, lands, houses, hereditaments, or premises, stating that such offer was made by or on the behalf of the said commissioners or trustees or other persons as aforesaid, and that such offer was not then and thereupon agreed to, or was refused by the person or persons to whom the same was so offered; and that any such affidavit shall in all courts whatsoever be sufficient evidence and proof that such offer was made and was not

(b) *Gard v. Commissioners of Sewers* (1884), 28 Ch. D. 486; *Fernley v. Limehouse Board of Works* (1899), 80 L. T. 351.

agreed to, or was refused by the person or persons to whom such offer was made, as the case may be; and in case such person or persons shall be desirous of repurchasing the same, and he, she, or they, and the said commissioners or trustees, or other persons as aforesaid, shall differ and not agree with respect to the price thereof, then the price or prices thereof shall be ascertained by a jury, in the manner herein-before directed with respect to the disputed value of premises to be purchased by the said commissioners or trustees or other persons as aforesaid in pursuance of this act; and the expense of hearing and determining such differences shall be borne and paid in like manner as is herein-before directed with respect to such purchase made by the said commissioners or trustees or other persons as aforesaid (*mutatis mutandis*); and the money to arise by the sale or sales which may be made by the said commissioners or trustees or other persons as aforesaid, of such freehold or leasehold estates, lands, houses, hereditaments, and premises shall be applied by the said commissioners or trustees or other persons as aforesaid to the purposes of the local act or acts of parliament relating to the parochial or other division over the pavements whereof they shall possess a control, or to the purposes of this act, but the purchaser or purchasers thereof shall not be answerable or accountable for any misapplication or non-application of the money paid by him or them for such freehold or leasehold estates, lands, houses, hereditaments, and premises.

Section IV. (c).—Housing and Town Planning.

THE HOUSING OF THE WORKING CLASSES ACT, 1890.

53 & 54 VICT. c. 70.

An Act to consolidate and amend the Acts relating to Artizans and Labourers Dwellings and the Housing of the Working Classes.
[18th August, 1890.]

* * * * *

PART I.

UNHEALTHY AREAS.

[Sects. 4—19 provide for the making, confirmation and execution of a scheme for improving unhealthy areas.]

Acquisition of Land.

20. The clauses of the Lands Clauses Acts, with respect to the purchase and taking of lands, otherwise than by agreement, shall not, except to the extent set forth in the second schedule to this act, apply

Acquisition
of land.

(c) See Book II., c. V., *ante*, p. 354.

to any lands taken in pursuance of this part of this act, but save as aforesaid the said Lands Clauses Acts, as amended by the provisions contained in the said schedule, shall regulate and apply to the purchase and taking of lands, and shall for that purpose be deemed to form part of this act in the same manner as if they were enacted in the body thereof; subject to the provisions of this part of this act and to the provisions following; that is to say,

(i) This part of this act shall authorise the taking by agreement of any lands which the local authority may require for the purpose of carrying into effect the scheme authorised by any confirming act, but it shall authorise the taking by the exercise of any compulsory powers of such lands only as are proposed by the scheme in the confirming act to be taken compulsorily:

(ii) In the construction of the Lands Clauses Acts, and the provisions in the second schedule to this act, this part of this act shall be deemed to be the special act, and the local authority shall be deemed to be the promoters of the undertaking; and the period after which the powers for the compulsory purchase or taking of lands shall not be exercised shall be three years after the passing of the confirming act.

Special provision as to compensation.

21 (d).—(1.) Whenever the compensation payable in respect of any lands or of any interests in any lands proposed to be taken compulsorily in pursuance of this part of this act requires to be assessed—

(a) The estimate of the value of such lands or interests shall be based upon the fair market value, as estimated at the time of the valuation being made of such lands, and of the several interests in such lands, due regard being had to the nature and then condition of the property, and the probable duration of the buildings in their existing state, and to the state of repair thereof, without any additional allowance in respect of the compulsory purchase of an area or of any part of an area in respect of which an official representation has been made, or of any lands included in a scheme which, in the opinion of the arbitrator, have been so included as falling under the description of the property which may be constituted an unhealthy area under this part of this act; and

(b) In such estimate any addition to or improvement of the property made after the date of the publication in pursuance of this part of this act of an advertisement stating the fact of the improvement scheme having been made shall not (unless such addition or improvement was necessary for the maintenance of the property in a proper state of repair) be included, nor in the case of any interest acquired after the said date shall any separate estimate of the value thereof be made so as to increase the amount of compensation to be paid for the lands; and

(d) In certain cases these provisions no longer apply; 9 & 10 Geo. 5, c. 35, s. 9 (2), *post*, p. 560.

(2.) On the occasion of assessing the compensation payable under any improvement scheme in respect of any house or premises situate within an unhealthy area evidence shall be receivable by the arbitrator to prove (e)—

(1st) That the rental of the house or premises was enhanced by reason of the same being used for illegal purposes or being so overcrowded as to be dangerous or injurious to the health of the inmates; or

(2ndly) That the house or premises are in such a condition as to be a nuisance within the meaning of the acts relating to nuisances, or are in a state of defective sanitation, or are not in reasonably good repair; or

(3rdly) That the house or premises are unfit, and not reasonably capable of being made fit, for human habitation;

and, if the arbitrator is satisfied by such evidence, then the compensation—

(a) Shall in the first case so far as it is based on rental be based on the rental which would have been obtainable if the houses or premises were occupied for legal purposes and only by the number of persons whom the house or premises were, under all the circumstances of the case, fitted to accommodate without such overcrowding as is dangerous or injurious to the health of the inmates; and

(b) Shall in the second case be the amount estimated as the value of the house or premises if the nuisance had been abated, or if they had been put into a sanitary condition, or into reasonably good repair, after deducting the estimated expense of abating the nuisance, or putting them into such condition or repair, as the case may be; and

(c) Shall in the third case be the value of the land, and of the materials of the buildings thereon.

22. Upon the purchase by the local authority of any lands required for the purpose of carrying into effect any scheme, all rights of way, rights of laying down or of continuing any pipes, sewers, or drains on, through, or under such lands, or part thereof, and all other rights or easements in or relating to such lands, or any part thereof, shall be extinguished, and all the soil of such ways, and the property in the pipes, sewers, or drains, shall vest in the local authority, subject to this provision, that compensation shall be paid by the local authority to any persons or bodies of persons proved to have sustained loss by this section, and such compensation shall be determined in the manner in which compensation for lands is determinable under this part of this act, or as near thereto as circumstances admit.

Extinction of rights of way and other easements.

23. A local authority may for the purpose of providing accommodation for persons of the working classes displaced in consequence of (f) any improvement scheme, appropriate any lands for the time being belonging to them which are suitable for the purpose, or may purchase by agreement any such further lands as may be convenient.

Application of lands for accommodation of working classes.

* * * * *

(e) Cf. s. 41, *post*, p. 536, and 9 Edw. 7, c. 44, s. 29, *post*, p. 549.

(f) 9 Edw. 7, c. 44, Sched. 2.

(k) 9 & 10 Geo. 5, c. 35, Sched. 2.

after hearing such objections the local authority shall make an order either allowing the objection or directing that such obstructive building shall be pulled down, and such order shall be subject to appeal in like manner as an order of demolition of the local authority under the foregoing provisions of this part of this act.

(4.) Where an order of the local authority for pulling down an obstructive building is made under this section and either no appeal is made against the order, or an appeal is made and either fails or is abandoned, the local authority shall be authorised to purchase the lands on which the obstructive building is erected in like manner as if they had been authorised by a special act to purchase the same; and for the purpose of such purchase the provisions of the Lands Clauses Acts, with respect to the purchase and taking of lands otherwise than by agreement shall be deemed to be incorporated in this part of this act (subject nevertheless to the provisions of this part of this act), and for the purpose of the provisions of the Lands Clauses Acts this part of this act shall be deemed to be the special act, and the local authority to be the promoters of the undertaking, and such lands may be purchased at any time within one year after the date of the order, or if it was appealed against after the date of the confirmation.

(5.) The owner of the lands may within one month after notice to purchase the same is served upon him declare that he desires to retain the site of the obstructive building and undertake either to pull down or to permit the local authority to pull down the obstructive building, and in such case the owner shall retain the site and shall receive compensation from the local authority for the pulling down of the obstructive building.

(6.) The amount of such compensation, and also the amount of any compensation to be paid on the purchase of any lands under this section, shall in case of difference be settled by arbitration in manner provided in this part of this act.

(7.) Where the local authority is empowered to purchase land compulsorily, it shall not be competent for the owner of a house or other building (*l*) or manufactory to insist on his entire holding being taken, where part only is proposed to be taken as obstructive, and where such part proposed to be taken can, in the opinion of the arbitrator to whom the question of disputed compensation is submitted, be severed from the remainder of the house or other building (*l*) or manufactory without material detriment thereto, provided that compensation may be awarded in respect of the severance of the part so proposed to be taken in addition to the value of that part.

(8.) Where in the opinion of the arbitrator the demolition of an obstructive building adds to the value of such other buildings as are in that behalf mentioned in this section, the arbitrator shall apportion so much of the compensation to be paid for the demolition of the obstructive building as may be equal to the increase in value of the other buildings amongst such other buildings respectively, and the amount apportioned to each such other building in respect of its increase in value by reason of the demolition of such obstructive

building shall be deemed to be private improvement expenses incurred by the local authority in respect of such building, and such local authority may, for the purpose of defraying such expenses, make and levy improvement rates on the occupier of such premises accordingly; and the provisions of the Public Health Acts relating to private improvement expenses and to private improvement rates, shall so far as circumstances admit, apply accordingly in the same manner as if such provisions were incorporated in this act.

(9.) If any dispute arises between the owner or occupier of any building (to which any amount may be apportioned in respect of private improvement expenses) and the arbitrator by whom such apportionment is made, such dispute shall be settled by two justices in manner provided by the Lands Clauses Acts, in cases where the compensation claimed in respect of lands does not exceed fifty pounds.

(10.) Where the owner retains the site or any part thereof, no house or other building or erection which will be dangerous or injurious to health, or which will be an obstructive building within the meaning of this section, shall be erected upon such site or any part thereof; and if any house, building, or erection is erected on the site contrary to the provisions of this section the local authority may at any time order the owner to abate or alter the said house, building, or erection; and in the event of non-compliance with such order may, at the expense of the owner thereof, abate or alter the same.

(11.) Where the lands are purchased by the local authority the local authority shall pull down the obstructive building, or such part thereof as may be obstructive within the meaning of this section, and keep as an open space the whole site, or such part thereof as may be required to be kept open for the purpose of remedying the nuisance or other evils caused by such obstructive building, and may, with the assent of the Local Government Board, and upon such terms as that Board think expedient, sell such portion of the site as is not required for the purpose of carrying this section into effect.

(12.) A local authority may, where they so think fit, dedicate any land acquired by them under the authority of this section as a highway or other public place.

* * * * *

Settlement of Compensation.

Provisions as to arbitration. 41 (*m*). In all cases in which the amount of any compensation is, in pursuance of this part of this act, to be settled by arbitration, the following provisions shall have effect; (namely,)

(1.) The amount of compensation shall be settled by an arbitrator to be appointed and removable by the Local Government Board.

(2.) In settling the amount of any compensation—

(a) The estimate of the value of the dwelling-house shall be based on the fair market value as estimated at the time

(*m*) In certain cases these provisions no longer apply: 9 & 10 Geo. 5, c. 35, s. 9 (2), *post*, p. 560.

of the valuation being made of such dwelling-house, and of the several interests in such dwelling-house, due regard being had to the nature and then condition of the property and the probable duration of the buildings in their existing state, and to the state of repair thereof, and without any additional allowance in respect of compulsory purchase; and

- (b) The arbitrator shall have regard to and make an allowance in respect of any increased value which, in his opinion, will be given to other dwelling-houses of the same owner by the alteration or demolition by the local authority of any buildings.

(3.) Evidence shall be receivable by the arbitrator to prove (n)—

- (1st) That the rental of the dwelling-house was enhanced by reason of the same being used for illegal purposes or being so overcrowded as to be dangerous or injurious to the health of the inmates; or

- (2ndly) That the dwelling-house is in a state of defective sanitation, or is not in reasonably good repair; or

- (3rdly) That the dwelling-house is unfit, and not reasonably capable of being made fit, for human habitation;

and, if the arbitrator is satisfied by such evidence, then the compensation—

- (a) Shall in the first case so far as it is based on rental be based on the rental which would have been obtainable if the dwelling-house was occupied for legal purposes and only by the number of persons whom the dwelling-house was under all the circumstances of the case fitted to accommodate without such overcrowding as is dangerous or injurious to the health of the inmates; and

- (b) Shall in the second case be the amount estimated as the value of the dwelling-house if it had been put into a sanitary condition, or into reasonably good repair, after deducting the estimated expense of putting it into such condition or repair; and

- (c) Shall in the third case be the value of the land, and of the materials of the buildings thereon.

- (4.) On payment or tender to the person entitled to receive the same of the amount of compensation agreed or awarded to be paid in respect of the dwelling-house, or on payment thereof in manner prescribed by the Lands Clauses Acts, the owner shall, when required by the local authority, convey his interest in such dwelling-house to them, or as they may direct; and in default thereof, or if the owner fails to adduce a good title to such dwelling-house to the satisfaction of the local authority, it shall be lawful for the local authority, if they think fit, to execute a deed poll, in such manner and with such consequences as are mentioned in the Lands Clauses Acts.

(n) Cf. s. 21 (2), *ante*, p. 533, and 9 Edw. 7, c. 44, s. 29, *post*, p. 549.

8 & 9 Vict.
c. 18. .

- (5.) Sections thirty-two, thirty-three, thirty-five, thirty-six and thirty-seven of the Lands Clauses Consolidation Act, 1845, shall apply, with any necessary modifications, to an arbitration and to an arbitrator appointed under this part of this act.
- (6.) The arbitrator may, by one award, settle the amount or amounts of compensation payable in respect of all or any of the dwelling-houses included in one or more order or orders made by the local authority; but he may, and, if the local authority request him so to do shall, from time to time make an award respecting a portion only of the disputed cases brought before him.
- (7.) In the event of the death, removal, resignation or incapacity, refusal or neglect to act of any arbitrator before he shall have made his award, the Local Government Board may appoint another arbitrator, to whom all documents relating to the matter of the arbitration which were in the possession of the former arbitrator shall be delivered.
- (8.) The arbitrator may, where he thinks fit, on the request of any party by whom any claim has been made before him, certify the amount of the costs properly incurred by such party in relation to the arbitration, and the amount of the costs so certified shall be paid by the local authority.
- (9.) The arbitrator shall not give such certificate where the arbitrator has awarded the same or a less sum than has been offered by the local authority in respect of such claim before the appointment of the arbitrator, and need not give such certificate to any party where he considers that such party neglected, after due notice from the local authority, to deliver to that authority a statement in writing within such time, and containing such particulars respecting the compensation claimed, as would have enabled the local authority to make a proper offer of compensation to such party before the appointment of the arbitrator.
- (10.) If within seven days after demand the amount so certified be not paid to the party entitled to receive the same, such amount shall be recoverable as a debt from the local authority with interest at the rate of five per cent. per annum for any time during which the same remains unpaid after such seven days as aforesaid.
- (11.) The award of the arbitrator shall be final and binding on all parties.

* * * * *

PART III.

WORKING CLASS LODGING HOUSES.

Definition of
purposes of
Labouring
Classes

53.—(1.) The expression “lodging houses for the working classes” when used in this part of this act shall include separate houses or cottages for the working classes, whether containing one or several

tenements, and the purposes of this part of this act shall include the provision of such houses and cottages. Lodging Houses Acts.

(2.) *The expression "cottage" in this part of this act may include a garden of not more than one acre (o).*

* * * * *

Execution of Part III. by Local Authority.

56. Where this part of this act has been adopted in any district, the local authority shall have power to carry it into execution (subject to the provisions of this part of this act with respect to rural sanitary authorities), and for that purpose may exercise the same powers whether of contract or otherwise as in the execution of their duties in the case of the London County Council under the Metropolis Management Act, 1855, and the acts amending the same, or in the case of sanitary authorities under the Public Health Acts, or in the case of the Commissioners of Sewers under the acts conferring powers on such Commissioners. Powers of local authority.
18 & 19 Vict. c. 120.
38 & 39 Vict. c. 55.

57.—(1.) Land for the purposes of this part of this act (*p*) may be acquired by a local authority in like manner as if those purposes were purposes of the Public Health Act, 1875, and sections one hundred and seventy-five to one hundred and seventy-eight, both inclusive, of that act (relating to the purchase of lands), shall apply accordingly (*q*), and shall for the purposes of this part of this act extend to London in like manner as if the Commissioners of Sewers and London County Council respectively were a local authority in the said sections mentioned, and a Secretary of State were substituted for the Local Government Board. Acquisition of land.
38 & 39 Vict. c. 55.

SECOND SCHEDULE (*r*).

PROVISIONS WITH RESPECT TO THE PURCHASE AND TAKING OF LANDS IN ENGLAND OTHERWISE THAN BY AGREEMENT, AND OTHERWISE AMENDING THE LANDS CLAUSES ACTS. Sect. 20.

Deposit of Maps and Plans.

(1.) The local authority shall *before making an application for the appointment of an arbitrator as hereinafter mentioned* (*s*) cause to be made out, and to be signed by their clerk or some other principal Deposit of maps and plans.

(*o*) Substituted for the original definition by 9 Edw. 7, c. 44, s. 50.

(*p*) The powers of the local authority and the purposes for which land may be acquired have been extended by 9 & 10 Geo. 5, c. 35, s. 12.

(*q*) The provisions of the Public Health Act, 1875, are now superseded by the provisions of the Housing, Town Planning, &c. Act, 1909 (9 Edw. 7, c. 44). s. 2 (2). See *post*, p. 547.

(*r*) As to the effect of the Acquisition of Land (Assessment of Compensation) Act, 1919, see *ante*, p. 354.

(*s*) 9 & 10 Geo. 5, c. 35, Sched. 2.

referred to as "a disputed case") the arbitrator (*u*), and after hearing all such parties interested in each disputed case as may appear before him at a time and place of which notice has been given as in Part I. of this act mentioned, shall proceed to decide on the amount of compensation to which he may consider the claimant to be entitled in each case.

(8.) The arbitrator shall give notice to the claimants in disputed cases (*u*) of a time and place at which the difference between the claimants and the local authority (*u*) will be decided by the arbitrator.

(9.) After the arbitrator has arrived at a decision on all the disputed cases brought before him he shall make an award under his hand and seal, and such award shall be final, and be binding and conclusive (*u*) upon all persons whomsoever, and no such award shall be set aside for irregularity in matter of form, but the arbitrator may, and if the local authority request him so to do shall, from time to time make an award respecting a portion only of the disputed cases brought before him.

(10.) Such award as aforesaid shall be deposited at the office of the confirming authority, and a copy thereof shall be deposited at the office of the local authority.

The title in the case of a person claiming a fee simple interest in any lands included in any such award as aforesaid shall commence twenty years previous to the date of the claim except there has been an absolute conveyance on sale within twenty years and more than ten years previous to the claim when the title shall commence with such conveyance. Provided that the local authority shall not be prevented if they think fit from requiring at their own expense any further abstract or evidence of title respecting any lands included in any such award as aforesaid in addition to the title hereinbefore mentioned (x).

Special Powers of Arbitration.

(11.) The arbitrator shall have the same power of apportioning any rent-service, rent-charge, chief or other rent, payment, or incumbrance, or any rent payable in respect of lands comprised in a lease, as two justices have under the Lands Clauses Consolidation Act, 1845.

Power of arbitrator as to apportionment.

(12.) Notwithstanding anything in sect. 92 of the Lands Clauses Consolidation Act, 1845, the arbitrator may determine that such part of any house, building, or manufactory as is proposed to be taken by the local authority, can be taken without material damage to such house, building, or manufactory, and if he so determine, may award compensation in respect of the severance of the part so proposed to be taken, in addition to the value of that part, and thereupon the party interested shall be required to sell and convey to the local authority such part without the local authority being obliged to purchase the greater part or the whole of such house, building, or manufactory (*y*).

Amendment respecting severance of properties.

(*u*) Certain words here repealed, 9 & 10 Geo. 5, c. 35, Sched. 2.

(*x*) 9 & 10 Geo. 5, c. 35, Sched. 2.

(*y*) Certain words here repealed by 9 & 10 Geo. 5, c. 35, Sched. 2.

Omitted
interests.

(13.) The amount of purchase-money or compensation to be paid in pursuance of sect. 124 of the Lands Clauses Consolidation Act, 1845, in respect of any estate, right, or interest in or charge affecting any of the scheduled lands which the local authority have, through mistake or inadvertence, failed or omitted duly to purchase or make compensation for, shall be awarded by the arbitrator and be paid in like manner, as near as may be, as the same would have been awarded and paid if the claim of such estate, right, interest, or charge had been delivered to the arbitrator before the day fixed for the delivery of statements of claims.

If the arbitrator is satisfied that the failure or omission to purchase the said estate, right, interest, or charge, arose from any default on the part either of the claimant or of the local authority, he may direct the costs to be paid by the party so in default.

Payment of Purchase-Money.

Payment of
purchase-
money.

(14.) Within thirty days from the delivery of a statement in writing by any person claiming any right to, or interest in, the lands and an abstract of title on which the same is founded (z) to the local authority, the local authority shall, where it appears to them that any person so claiming is absolutely entitled to the lands, estate, or interest claimed by him, deliver to such person, on demand, a certificate stating the amount of the compensation to which he is entitled under the said award.

(15.) Every such certificate shall be prepared by and at the cost of the local authority; and where any agreement has been entered into as to the compensation payable in respect of the interest of any person in any lands, the local authority may, where it appears to them that such person is absolutely entitled, deliver to such person a like certificate.

(16.) The local authority shall, thirty days after demand, pay to the party to whom any such certificate is given, or otherwise as herein provided in the cases hereinafter mentioned, the amount of moneys specified to be payable by such certificate to the party to whom or in whose favour such certificate is given, his or her executors, administrators, or assigns.

(17.) If the local authority wilfully make default in such payment as aforesaid, then the party named in such certificate shall be entitled to enter up judgment against the local authority in the High Court for the amount of the sums specified in such certificate, in the same manner in all respects as if he had been, by warrant of attorney from the local authority, authorized to enter up judgment for the amount mentioned in the certificate, with costs, as is usual in like cases; and all moneys payable under such certificates, or to be recovered by such judgments as aforesaid, shall at law and in equity be taken as personal estate as from the time of the local authority entering on any such lands as aforesaid.

(18.) When and so soon as the local authority have paid to the

party to whom any such certificate as aforesaid is given, or otherwise, as herein provided, in the cases hereinafter mentioned, the amount specified to be payable by such certificate to the party to whom or in whose favour the certificate is given, his executors, administrators, or assigns, it shall be lawful for the local authority, upon obtaining such receipt as hereinafter mentioned, from time to time to enter upon any lands in respect of which such certificate is given, and thenceforth to hold the same for the estate or interest in respect of which the amount specified in such certificate was payable.

(19.) In every case in which any moneys are paid by any local authority under this act for such compensation as aforesaid, the party receiving such moneys shall give to the local authority a receipt for the same, and such receipt shall have the effect of a grant, release, and conveyance of all the estate and interest of such party, and of all parties claiming under or through him, in the lands in respect of which such moneys are paid, provided such receipt has an *ad valorem* stamp of the same amount impressed thereon in respect of the purchase-moneys mentioned in such certificate as would have been necessary if such receipt had been an actual conveyance (a) of such estate or interest, every such receipt to be prepared by and at the cost of the local authority.

(20.) If it appear to the local authority, from any such statement and abstract as aforesaid, or otherwise, that the person making any such claim as aforesaid is not absolutely entitled to the lands, estate, or interest in respect of which his claim is made, or is under any disability, or if the title to such lands, estate, or interest be not satisfactorily deduced to the local authority, then and in every such case the amount to be paid by the local authority in respect of such lands, estate, or interest as aforesaid shall be paid and applied as provided by the clauses of the Lands Clauses Consolidation Act, 1845 (b), as amended by the Court of Chancery Funds Act, 1872, "with respect to the purchase-money or compensation coming to parties having limited interests, or prevented from treating, or not making title" (c).

(21.) Where any person claiming any right or interest in any lands refuses to produce his title to the same, or where the local authority have under the provisions of Part I. of this act taken possession of any lands in respect of the compensation whereof, or of any estate or interest wherein, no claim has been made within one year from the time of the local authority taking possession, or if any party to whom any such certificate has been given or tendered refuses to receive such certificate, or to accept the amount therein specified as payable to him, then and in any such case the amount payable by the local authority in respect of such lands, estate, or interest, or the

(a) See Stamp Act, 1891, ss. 54—61.

(b) *i.e.*, ss. 69—80.

(c) *In re Artizans, &c. Dwellings Act, Ex parte Jones* (1880), 14 Ch. D. 624. As to the combined effect of Arts. 18 and 20, see *In re Shaw and Birmingham Corporation* (1884), 27 Ch. D. 614. Where the lands are acquired from another local authority see 9 Edw. 7, c. 44, s. 5, *post*, p. 547.

amount specified in such certificate, shall be paid into the Bank of England, in manner provided by the last-mentioned clauses of the Lands Clauses Consolidation Act, 1845, as amended by the Court of Chancery Funds Act, 1872, and the amount so paid into the said bank shall be accordingly dealt with as by the said act provided.

(22.) (d).

(23.) If from any reason whatever the local authority does not deliver the certificate aforesaid to any party claiming to be entitled to any interest in any lands the possession whereof has been taken by the local authority as aforesaid, then the right to have a certificate according to the provisions of this act may, at the costs and charges of the local authority, be enforced by any party or parties, by application to the High Court, in a summary way by petition, and all other rights and interests of any party or parties arising under the provisions of this act may be in like manner enforced against the local authority by such application as aforesaid.

Entry on Lands on making Deposit.

Entry on
lands.

(24.) Where the local authority are desirous, for the purposes of their works, of entering upon any lands before they would be entitled to enter thereon under the provisions hereinbefore contained, it shall be lawful for the local authority, at any time after the arbitrator has framed his award, upon depositing in the Bank of England such sum as the arbitrator may certify to be in his opinion the proper amount to be so deposited in respect of any lands authorized to be purchased or taken by the local authority, and mentioned in such award, to enter upon and use such lands for the purposes of the improvement scheme of the local authority; and the arbitrator shall, upon the request of the local authority, at any time after he has framed such award, certify under his hand the sum which, in his opinion, should be so deposited by the local authority in respect of any lands mentioned in such award before they enter upon and use the same as aforesaid, and the sum to be so certified shall be the sum or the amount of the several sums set forth in such award as the sum or sums to be paid by the local authority in respect of such lands, or such greater amount as to the arbitrator, under the circumstances of the case, may seem proper; and, notwithstanding such entry as aforesaid, all proceedings for and in relation to the completion of the award, the delivery of certificates, and other proceedings under Part I. of this act, shall be had, and payments made, as if such entry and deposit had not been made;

Provided that the local authority shall, where they enter upon any lands by virtue of this present provision, pay interest at the rate of five pounds per centum per annum upon the compensation money payable by them in respect of any lands so entered upon, from the time of their entry until the time of the payment of such money and interest to the party entitled thereto, or where, under the provisions of Part I. of this act, such compensation is required to be paid into the Bank of England, then until the same, with such interest, is paid into

(d) Repealed by 9 & 10 Geo. 5, c. 35, Sched. 2.

such bank accordingly; and where under this provision interest is payable on any compensation money the certificate to be delivered by the local authority in respect thereof shall specify that interest is so payable, and the same shall be recoverable in like manner as the principal money mentioned in such certificate.

(25.) The money so deposited as last aforesaid shall be paid into the Bank of England to such account as may from time to time be directed by any regulation or act for the time being in force in relation to moneys deposited in the bank in similar cases, or to such account as may be directed by any order of the High Court, and remain in the bank by way of security to the parties interested in the lands which have been so entered upon, for the payment of the money to become payable by the local authority in respect thereof under the award of the arbitrator; and the money so deposited may, on the application by petition of the local authority, be ordered to be invested in bank annuities or Government securities, and accumulated; and upon such payment as aforesaid by the local authority, it shall be lawful for the High Court, upon a like application, to order the money so deposited, or the funds in which the same shall have been invested, together with the accumulation thereof, to be repaid or transferred to the local authority, or, in default of such payment as aforesaid by the local authority, it shall be lawful for the said court to order the same to be applied in such manner as it thinks fit for the benefit of the parties for whose security the same shall so have been deposited (e).

Appeal (f).

Costs of Arbitration.

(28.) The salary or remuneration, travelling and other expenses of the arbitrator, and all costs, charges, and expenses (if any) which may be incurred by the confirming authority in carrying the provisions of Part I. of this act into execution, shall, after the amount thereof shall be certified under this article, be paid by the local authority; and the amount of such costs, charges, and expenses shall from time to time be certified by the confirming authority after first hearing any objections that may be made to the reasonableness of any such costs, charges, and expenses by or on behalf of the local authority; and every certificate of the said confirming authority certifying the amount of such costs, charges, and expenses shall be taken as proof in all proceedings at law or in equity of the amount of such respective costs, charges, and expenses, and the amount so certified shall be a debt due from the local authority to the Crown, and shall be recoverable accordingly.

Further, any such certificate may be made a rule of a superior court on the application of any party named therein, and may be enforced accordingly.

(e) *In re Artizans, &c. Dwellings Act, Ex parte Jones* (1880), 14 Ch. D. 624.

(f) The whole of paragraphs 26 and 27 were repealed by 9 & 10 Geo. 5, c. 35, Sched. 2.

(29.)—(1.) It shall be lawful for the arbitrator, where he thinks fit, upon the request of any party by whom any claim has been made before him, to certify the amount of the costs properly incurred by such party in relation to the arbitration, and the amount of the costs so certified shall be paid by the local authority:

Provided that—

- (a) The arbitrator shall not be required to certify the amount of costs in any case where he considers such costs are not properly payable by the local authority.
- (b) The arbitrator shall not be required to certify the amount of costs incurred by any party in relation to the arbitration, in any case where he considers that such party neglected, after due notice from the local authority, to deliver to that authority a statement in writing within such time, and containing such particulars respecting the compensation claimed, as would have enabled the local authority to make a proper offer of compensation to such party before the appointment of the arbitrator.
- (c) No certificate shall be given where the arbitrator has awarded the same or a less sum than has been offered by the local authority in respect of the claim *not less than fourteen days before the date of arbitration in that particular case (g)*.

(2.) If within seven days after demand the amount certified be not paid to the party entitled to receive the same, such amount shall be recoverable as a debt from the local authority, with interest at the rate of five per cent. per annum for any time during which the same remains unpaid after such seven days as aforesaid.

Miscellaneous.

Miscellaneous.

(30.) The arbitrator may call for the production of any documents, *other than any formal offer made by the local authority (g)*, in the possession or power of the local authority, or of any party making any claim under Part I. of this act, which such arbitrator may think necessary for determining any question or matter to be determined by him under Part I. of this act, and may examine any such party and his witnesses, and the witnesses for the local authority, on oath, and administer the oaths necessary for that purpose.

(31.) If any arbitrator appointed in pursuance of Part I. of this act die, or refuse, decline, or become incapable to act, the confirming authority may appoint an arbitrator in his place, who shall have the same powers and authorities as the arbitrator first appointed: and upon the appointment of any arbitrator in the place of an arbitrator dying, or refusing, declining, or becoming incapable to act, all the documents relating to the matter of the arbitration which were in the possession of such arbitrator shall be delivered to the arbitrator appointed in his place, and the local authority shall publish notice of such appointment in the London Gazette.

(32.) All notices required by this schedule to be published shall be published in a (g) newspaper circulating within the jurisdiction

of the local authority, and where no other form of service is prescribed all notices required to be served or given by the local authority under this schedule or otherwise upon any persons interested in or entitled to sell lands, shall be served in manner in which notices of lands proposed to be taken compulsorily for the purpose of an improvement scheme are directed by Part I. of this act to be served upon owners or reputed owners, lessees or reputed lessees, and occupiers.

[The remaining articles (Arts. 33—35) contained provisions for the application of the schedule to Scotland and Ireland.]

THE HOUSING, TOWN PLANNING, &c. ACT, 1909.

9 EDW. 7, c. 44.

PART I.

HOUSING OF THE WORKING CLASSES.

Facilities for Acquisition of Lands and other Purposes of the Housing Acts.

1. Part III. of the Housing of the Working Classes Act, 1890 (in this Part of this Act referred to as the principal Act), shall, after the commencement of this Act, extend to and take effect in every urban or rural district, or other place for which it has not been adopted, as if it had been so adopted.

Part III. of the principal Act to take effect without adoption.

53 & 54 Vict. c. 70.

2.—(1) A local authority may be authorised to purchase land compulsorily for the purposes of Part III. of the principal Act, by means of an order submitted to the Local Government Board and confirmed by the Board in accordance with the First Schedule to this Act.

Provisions as to acquisition of land under Part III. of the principal Act.

38 & 39 Vict. c. 55.

(2) The procedure under this section for the compulsory purchase of land shall be substituted for the procedure for the same purpose under section one hundred and seventy-six of the Public Health Act, 1875, as applied by subsection (1) of section fifty-seven of the principal Act.

(3) A local authority may, with the consent of and subject to any conditions imposed by the Local Government Board, acquire land by agreement for the purposes of Part III. of the principal Act, notwithstanding that the land is not immediately required for those purposes.

* * * * *

5.—(1) Any purchase money or compensation payable in pursuance of the Housing Acts by a local authority in respect of any lands, estate, or interest of another local authority which would, but for this section, be paid into court in manner provided by the Lands Clauses Acts or by paragraph (20) of the Second Schedule to the principal Act may, if the Local Government Board consent, instead of being paid into court, be paid and applied as the Board determine.

Payment of purchase or compensation money (which would otherwise be paid into court) on direction of Local Government Board.

(2) Any such decision of the Board as to the payment and application of any such purchase money or compensation shall be final and conclusive.

* * * * *

Powers of county council to act in default of rural district council under Part III. of the principal Act.

12. Where a complaint is made to the council of a county by the parish council or parish meeting of any parish comprised in any rural district in the county, or by any four inhabitant householders of that district, the county council may cause a public local inquiry to be held, and if, after holding such an inquiry, the county council are satisfied that the rural district council have failed to exercise their powers under Part III. of the principal Act in cases where those powers ought to have been exercised, the county council may resolve that the powers of the district council for the purposes of that Part be transferred to the county council with respect either to the whole district or to any parish in the district, and those powers shall be transferred accordingly, and, subject to the provisions of this Act, section sixty-three of the Local Government Act, 1894, shall apply as if the powers had been transferred under that Act.

Power of county council to exercise powers of rural district council under Part III. of the principal Act.

13.—(1) Where the council of a county are of opinion that for any reason it is expedient that the council should exercise, as respects any rural district in the county, any of the powers of a local authority under Part III. of the principal Act, the council, after giving notice to the council of the district of their intention to do so, may apply to the Local Government Board for an order conferring such powers on them.

(2) Upon such an application being made, the Board may make an order conferring on the county council as respects the rural district all or any of the powers of a local authority under Part III. of the principal Act, and thereupon the provisions of the Housing Acts relating to those powers (including those enabling the Public Works Loan Commissioners to lend, and fixing the terms for which money may be lent and borrowed) shall apply as if the council were a local authority under Part III. of the principal Act: Provided that the expenses incurred by the county council under any such order shall be defrayed as expenses for general county purposes.

(3) Where, under any such order, the county council have executed any works in a rural district they may transfer the works to the council of that district on such terms and subject to such conditions as may be agreed between them.

* * * * *

Amendment of s. 38 of the principal Act as to distribution of compensation money and as to betterment charges.

28.—(1) The amount of any compensation payable under section thirty-eight of the principal Act (*h*) (which relates to obstructive buildings) shall, when settled by arbitration in manner provided by that section, be apportioned by the arbitrator between any persons having an interest in the compensation in such manner as the arbitrator determines.

(2) The power of the arbitrator to apportion compensation under the foregoing provision and to apportion any part of the compensa-

(*h*) *Ante*, p. 534.

tion to be paid for the demolition of an obstructive building amongst other buildings under subsection (8) of the said section thirty-eight may be exercised in cases where the amount to be paid for compensation has been settled, otherwise than by arbitration under the principal Act, by an arbitrator appointed for the special purpose, on the application of the local authority, by the Local Government Board, and the provisions of that Act shall apply as if the arbitrator so appointed had been appointed as arbitrator to settle the amount to be paid for compensation.

29. For removing doubts it is hereby declared that a local authority may tender evidence before an arbitrator to prove the facts under the headings (first) (secondly) (thirdly) mentioned in subsection (2) (i) of section twenty-one and subsection (3) (k) of section forty-one of the principal Act, notwithstanding that the local authority have not taken any steps with a view to remedying the defects or evils disclosed by the evidence.

Eplanation
of ss. 21 (2)
and 41 (3) of
the principal
Act.

34. Section one hundred and thirty-three of the Lands Clauses Consolidation Act, 1845 (relating to Land Tax and poor rate), shall not apply in the case of any lands of which a local authority becomes possessed by virtue of the Housing Acts.

Exemption
from s. 133
of 8 & 9 Vict.
c. 18.

40. Notwithstanding anything contained in the principal Act it shall not be obligatory upon a local authority to sell and dispose of any lands or dwellings acquired or constructed by them for any of the purposes of the Housing Acts.

Sale and
disposal of
dwellings.

41.—(1) The Local Government Board may by order prescribe the form of any notice, advertisement, or other document to be used in connection with the powers and duties of a local authority or of the Board under the Housing Acts, and the forms so prescribed, or forms as near thereto as circumstances admit, shall be used in all cases to which those forms are applicable.

Power to
prescribe
forms and to
dispense with
advertisements
and notices.

(2) The Local Government Board may dispense with the publication of advertisements or the service of notices required to be published or served by a local authority under the Housing Acts, if they are satisfied that there is reasonable cause for dispensing with the publication or service.

(3) Any such dispensation may be given by the Local Government Board either before or after the time at which the advertisement is required to be published or the notice is required to be served, and either unconditionally or upon such conditions as to the publication of other advertisements or the service of other notices or otherwise as the Board think fit, due care being taken by the Board to prevent the interests of any person being prejudiced by the dispensation.

45. Nothing in the Housing Acts shall authorise the acquisition for the purposes of those Acts of any land which is the site of an ancient monument or other object of archæological interest, or the

Saving of
sites of
ancient monu-
ments, &c.

53 & 54 Vict.
c. 70. compulsory acquisition for the purposes of Part III. of the Housing of the Working Classes Act, 1890, of any land which is the property of any local authority or has been acquired by any corporation or company for the purposes of a railway, dock, canal, water, or other public undertaking, or which at the date of the order forms part of any park, garden, or pleasure ground, or is otherwise required for the amenity or convenience of any dwelling-house.

* * * * *

Provisions of this Part to be deemed to be part of the appropriate Part of the principal Act. 47.—(1) Any provisions of this Act which supersede or amend any provisions of the principal Act shall be deemed to be part of that Part of the principal Act in which the provisions superseded or amended are contained.

* * * * *

Definition of Housing Acts. 51. In this Part of this Act the expression "Housing Acts" means the principal Act, and any Act amending that Act, including this Act.

* * * * *

PART II.

TOWN PLANNING.

Preparation and approval of town planning scheme. 54.—(1) A town planning scheme may be made in accordance with the provisions of this Part of this Act as respects any land which is in course of development or appears likely to be used for building purposes, with the general object of securing proper sanitary conditions, amenity, and convenience in connexion with the laying out and use of the land, and of any neighbouring lands.

Provided that where a piece of land already built upon or a piece of land not likely to be used for building purposes is so situate with respect to any land likely to be used for building purposes that the general object of the scheme would be better secured by its inclusion in any town planning scheme made with respect to the last-mentioned land, the scheme may include such piece of land as aforesaid, and may provide for the demolition or alteration of any buildings thereon so far as may be necessary for carrying the scheme into effect (1).

* * * * *

(7) The expression "land likely to be used for building purposes" shall include any land likely to be used as, or for the purpose of providing, open spaces, roads, streets, parks, pleasure or recreation grounds, or for the purpose of executing any work upon or under the land incidental to a town planning scheme, whether in the nature of a building work or not, and the decision of the Local Government Board, whether land is likely to be used for building purposes or not, shall be final.

Contents of town planning schemes. 55.—(1) The Local Government Board may prescribe a set of general provisions (or separate sets of general provisions adapted for areas of any special character) for carrying out the general objects

(1) This proviso is added by 9 & 10 Geo. 5, c. 35, Sched. 3.

of town planning schemes, and in particular for dealing with the matters set out in the Fourth Schedule to this Act, and the general provisions, or set of general provisions appropriate to the area for which a town planning scheme is made, shall take effect as part of every scheme, except so far as provision is made by the scheme as approved by the Board for the variation or exclusion of any of those provisions.

(2) Special provisions shall in addition be inserted in every town planning scheme defining in such manner as may be prescribed by regulations under this Part of this Act the area to which the scheme is to apply, and the authority who are to be responsible for enforcing the observance of the scheme, and for the execution of any works which under the scheme or this Part of this Act are to be executed by a local authority (in this Part of this Act referred to as the responsible authority), and providing for any matters which may be dealt with by general provisions, and otherwise supplementing, excluding, or varying the general provisions, and also for dealing with any special circumstances or contingencies for which adequate provision is not made by the general provisions, and for suspending, so far as necessary for the proper carrying out of the scheme, any statutory enactments, byelaws, regulations, or other provisions, under whatever authority made, which are in operation in the area included in the scheme (*m*).

56.—(1) The Local Government Board may make regulations for regulating generally the procedure to be adopted with respect to the preparation or adoption of a town planning scheme (*n*), obtaining the approval of the Board to a scheme so prepared or adopted, the variation or revocation of a scheme (*n*), and any inquiries, reports, notices, or other matters required in connection with the preparation or adoption or the approval of the scheme or preliminary thereto, or in relation to the carrying out of the scheme or enforcing the observance of the provisions thereof, or the variation or revocation of the scheme (*n*).

Procedure
regulations
of the Local
Government
Board.

(2) Provision shall be made by those regulations—

- (a) for securing co-operation on the part of the local authority with the owners and other persons interested in the land proposed to be included in the scheme *by such means* (*n*) as may be provided by the regulations;
- (b) for securing that notice of the proposal to prepare or adopt the scheme should be given at the earliest stage possible to any council interested in the land;
- (c) for dealing with the other matters mentioned in the Fifth Schedule to this Act.

For securing that the council of the county in which any land proposed to be included in a town planning scheme is situated (1) shall be furnished with a notice of any proposal to prepare or adopt such a scheme and with a copy

(*m*) The proviso to this sub-section is repealed by 9 & 10 Geo. 5, c. 35, s. 44.

(*n*) 9 & 10 Geo. 5, c. 35, Sched. 3.

of the draft scheme before the scheme is made, and (2) shall be entitled to be heard at any public local inquiry held by the Local Government Board in regard to the scheme (o).

Power to
enforce
scheme.

57.—(1) The responsible authority may at any time, after giving such notice as may be provided by a town planning scheme and in accordance with the provisions of the scheme—

- (a) remove, pull down, or alter any building or other work in the area included in the scheme which is such as to contravene the scheme, or in the erection or carrying out of which any provision of the scheme has not been complied with; or
- (b) execute any work which it is the duty of any person to execute under the scheme in any case where it appears to the authority that delay in the execution of the work would prejudice the efficient operation of the scheme.

(2) Any expenses incurred by a responsible authority under this section may be recovered from the persons in default in such manner and subject to such conditions as may be provided by the scheme.

(3) If any question arises whether any building or work contravenes a town planning scheme, or whether any provision of a town planning scheme is not complied with in the erection or carrying out of any such building or work, that question shall be referred to the Local Government Board, and shall, unless the parties otherwise agree, be determined by the Board as arbitrators, and the decision of the Board shall be final and conclusive and binding on all persons.

Compensation
in respect of
property in-
juri-ously
affected by
scheme, &c.

58.—(1) Any person whose property is injuriously affected by the making of a town planning scheme shall, if he makes a claim for the purpose within the time (if any) limited by the scheme, not being less than three months after the date when notice of the approval of the scheme is published in the manner prescribed by regulations made by the Local Government Board, be entitled to obtain compensation in respect thereof from the responsible authority.

(2) A person shall not be entitled to obtain compensation under this section on account of any building erected on, or contract made or other thing done with respect to, land included in a scheme, after the date of the resolution of the local authority to prepare or adopt the scheme or after the date when such resolution takes effect as the case may be (p), or after such other time as the Local Government Board may fix for the purpose:

Provided that this provision shall not apply as respects any work done before the date of the approval of the scheme for the purpose of finishing a building begun or of carrying out a contract entered into before such date or other time as aforesaid (p).

(3) Where, by the making of any town planning scheme, any property is increased in value, the responsible authority, if they make a claim for the purpose within the time (if any) limited by the scheme (not being less than three months after the date when notice of the

(o) Added by 9 & 10 Geo. 5, c. 35, s. 43.

(p) 9 & 10 Geo. 5, c. 35, Sched. 3. See also as to sub-sect. (2), 9 & 10 Geo. 5, c. 35, s. 45.

approval of the scheme is first published in the manner prescribed by regulations made by the Local Government Board), shall be entitled to recover from any person whose property is so increased in value one-half of the amount of that increase.

(4) Any question as to whether any property is injuriously affected or increased in value within the meaning of this section, and as to the amount and manner of payment (whether by instalments or otherwise) of the sum which is to be paid as compensation under this section or which the responsible authority are entitled to recover from a person whose property is increased in value, shall be determined by the arbitration of a single arbitrator appointed by the Local Government Board, unless the parties agree on some other method of determination.

(5) Any amount due under this section as compensation to a person aggrieved from a responsible authority, or to a responsible authority from a person whose property is increased in value, may be recovered summarily as a civil debt.

(6) Where a town planning scheme is revoked by an order of the Local Government Board under this Act, any person who has incurred expenditure for the purpose of complying with the scheme shall be entitled to compensation in accordance with this section in so far as any such expenditure is rendered abortive by reason of the revocation of the scheme.

59.—(1) Where property is alleged to be injuriously affected by reason of any provisions contained in a town planning scheme, no compensation shall be paid in respect thereof if or so far as the provisions are such as would have been enforceable if they had been contained in byelaws made by the local authority.

Exclusion or limitation of compensation in certain cases.

(2) Property shall not be deemed to be injuriously affected by reason of the making of any provisions inserted in a town planning scheme, which (g) prescribe the space about buildings or limit the number of buildings to be erected, or prescribe the height or character of buildings, and which the Local Government Board, having regard to the nature and situation of the land affected by the provisions, consider reasonable for the purpose.

(3) Where a person is entitled to compensation under this Part of this Act in respect of any matter or thing, and he would be entitled to compensation in respect of the same matter or thing under any other enactment, he shall not be entitled to compensation in respect of that matter or thing both under this Act and under that other enactment, and shall not be entitled to any greater compensation under this Act than he would be entitled to under the other enactment.

60.—(1) The responsible authority may, for the purpose of a town planning scheme, purchase any land comprised in such scheme by agreement, or be authorised to purchase any such land compulsorily in the same manner and subject to the same provisions (including any provision authorising the Local Government Board to give directions as to the payment and application of any purchase money or com-

Acquisition by local authorities of land comprised in a scheme.

pensation) as a local authority may purchase or be authorised to purchase land situate in an urban district for the purposes of Part III. of the Housing of the Working Classes Act, 1890, as amended by sections two and forty-five of this Act.

(2) Where land included within the area of a local authority is comprised in a town planning scheme, and the local authority are not the responsible authority, the local authority may purchase or be authorised to purchase that land in the same manner as the responsible authority.

Powers
of Local
Government
Board in
case of de-
fault of local
authority to
make or exe-
cute town
planning
scheme.

61.—(1) If the Local Government Board are satisfied on any representation, after holding a public local inquiry, that a local authority—

- (a) have failed to take the requisite steps for having a satisfactory town planning scheme prepared and approved in a case where a town planning scheme ought to be made; or
- (b) have failed to adopt any scheme proposed by owners of any land in a case where the scheme ought to be adopted; or
- (c) have unreasonably refused to consent to any modifications or conditions imposed by the Board;

the Board may, as the case requires, order the local authority to prepare and submit for the approval of the Board such a town planning scheme, or to adopt the scheme, or to consent to the modifications or conditions so inserted:

Provided that, where the representation is that a local authority have failed to adopt a scheme, the Local Government Board, in lieu of making such an order as aforesaid, may approve the proposed scheme, subject to such modifications or conditions, if any, as the Board think fit, and thereupon the scheme shall have effect as if it had been adopted by the local authority and approved by the Board.

(2) If the Local Government Board are satisfied on any representation, after holding a local inquiry, that a responsible authority have failed to enforce effectively the observance of a scheme which has been confirmed, or any provisions thereof, or to execute any works which under the scheme or this Part of this Act the authority is required to execute, the Board may order that authority to do all things necessary for enforcing the observance of the scheme or any provisions thereof effectively, or for executing any works which under the scheme or this Part of this Act the authority is required to execute.

(3) Any order under this section may be enforced by mandamus.

* * * *

Application
to London.

66.—(1) This Part of this Act shall apply to the administrative county of London, and, as respects that county, the London County Council shall be the local authority.

(2) Any expenses incurred by the London County Council shall be defrayed out of the general county rate and any money may be borrowed by the Council in the same manner as money may be borrowed for general county purposes.

* * * *

PART IV.

SUPPLEMENTAL.

73.—(1) Where any scheme or order under the Housing Acts or Part II. of this Act authorises the acquisition or appropriation to any other purpose of any land forming part of any common, open space, or allotment, the scheme or order, so far as it relates to the acquisition or appropriation of such land, shall be provisional only, and shall not have effect unless and until it is confirmed by Parliament, except where the scheme or order provides for giving in exchange for such land other land, not being less in area, certified by the Local Government Board after consultation with the Board of Agriculture and Fisheries to be equally advantageous to the persons, if any, entitled to commonable or other rights and to the public.

Provisions as to commons and open spaces.

(2) Before giving any such certificate the Board shall give public notice of the proposed exchange, and shall afford opportunities to all persons interested to make representations and objections in relation thereto, and shall, if necessary, hold a local inquiry on the subject.

(3) Where any such scheme or order authorises such an exchange, the scheme or order shall provide for vesting the land given in exchange in the persons in whom the common or open space was vested, subject to the same rights, trusts, and incidents as attached to the common or open space, and for discharging the part of the common, open space, or allotment acquired or appropriated from all rights, trusts, and incidents to which it was previously subject.

(4) For the purposes of this Act the expression "common" shall include any land subject to be enclosed under the Inclosure Acts, 1815 to 1882, and any town or village green; the expression "open space" means any land laid out as a public garden or used for the purposes of public recreation, and any disused burial ground; and the expression "allotment" means any allotment set out as a fuel allotment or a field garden allotment under an Inclosure Act.

74.—(1) Where any land proposed to be included in any scheme or order to be made under the Housing Acts or Part II. of this Act, or any land proposed to be acquired under the Housing Acts or Part II. of this Act, is situate within the prescribed distance from any of the royal palaces or parks, the local authority shall, before preparing the scheme or order or acquiring the land, communicate with the Commissioners of Works, and the Local Government Board shall, before confirming the scheme or order or authorising the acquisition of the land or the raising of any loan for the purpose, take into consideration any recommendations they may have received from the Commissioners of Works with reference to the proposal.

Provisions as to land in neighbourhood of royal palaces or parks.

(2) For the purposes of this section "prescribed" means prescribed by regulations made by the Local Government Board after consultation with the Commissioners of Works.

* * * * *

S. 2.

FIRST SCHEDULE.

PROVISIONS AS TO THE COMPULSORY ACQUISITION OF LAND BY A LOCAL AUTHORITY FOR THE PURPOSES OF PART III. OF THE HOUSING OF THE WORKING CLASSES ACT, 1890.

(1) Where a local authority propose to purchase land compulsorily under this Act, the local authority may submit to the Board an order putting in force as respects the land specified in the order the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.

(2) An order under this schedule shall be of no force unless and until it is confirmed by the Board, and the Board may confirm the order either without modification or subject to such modifications as they think fit, and an order when so confirmed shall, save as otherwise expressly provided by this schedule, become final and have effect as if enacted in this Act; and the confirmation by the Board shall be conclusive evidence that the requirements of this Act have been complied with, and that the order has been duly made and is within the powers of this Act.

(3) In determining the amount of any disputed compensation under any such order, no additional allowance shall be made on account of the purchase being compulsory.

(4) The order shall be in the prescribed form, and shall contain such provisions as the Board may prescribe for the purpose of carrying the order into effect, and of protecting the local authority and the persons interested in the land, and shall incorporate, subject to the necessary adaptations, the Lands Clauses Acts (except section one hundred and twenty-seven of the Lands Clauses Consolidation Act, 1845) and sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, but subject to this modification, that any question of disputed compensation shall be determined by a single arbitrator appointed by the Board, who shall be deemed to be an arbitrator within the meaning of the Lands Clauses Acts, and the provisions of those Acts with respect to arbitration shall, subject to the provisions of this schedule, apply accordingly.

(5) The order shall be published by the local authority in the prescribed manner, and such notice shall be given both in the locality in which the land is proposed to be acquired, and to the owners, lessees, and occupiers of that land as may be prescribed.

(6) If within the prescribed period no objection to the order has been presented to the Board by a person interested in the land, or if every such objection has been withdrawn, the Board shall, without further inquiry, confirm the order, but, if such an objection has been presented and has not been withdrawn, the Board shall forthwith cause a public inquiry to be held in the locality in which the land is proposed to be acquired, and the local authority and all persons interested in the land and such other persons as the person holding the inquiry in his discretion thinks fit to allow shall be permitted to appear and be heard at the inquiry.

8 & 9 Vict.
c. 18.

8 & 9 Vict.
c. 20.

(7) (r).

(8) The arbitrator shall, so far as practicable, in assessing compensation act on his own knowledge and experience, but, subject as aforesaid, at any inquiry or arbitration held under this schedule the person holding the inquiry or arbitration shall hear, by themselves or their agents, any authorities or parties authorised to appear, and shall hear witnesses, but shall not, except in such cases as the Board otherwise direct, hear council (*sic*) or expert witnesses (*s*).

(9) The Board may, with the concurrence of the Lord Chancellor, make rules fixing a scale of costs to be applicable on an arbitration under this schedule, and an arbitrator under this schedule may, notwithstanding anything in the Lands Clauses Acts, determine the amount of costs, and shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily and any other costs which he considers to have been caused or incurred unnecessarily.

(10) The remuneration of an arbitrator appointed under this schedule shall be fixed by the Board.

(11) In construing for the purposes of this schedule or any order made thereunder, any enactment incorporated with the order, this Act together with the order shall be deemed to be the special Act, and the local authority shall be deemed to be the promoters of the undertaking.

(12) Where the land is glebe land or other land belonging to an ecclesiastical benefice, the order shall provide that sums agreed upon or awarded for the purchase of the land, or to be paid by way of compensation for the damage to be sustained by the owner by reason of severance or other injury affecting the land, shall not be paid as directed by the Lands Clauses Acts, but shall be paid to the Ecclesiastical Commissioners to be applied by them as money paid to them upon a sale, under the provisions of the Ecclesiastical Leasing Acts, of land belonging to a benefice.

(13) In this schedule the expression "Board" means the Local Government Board, and the expression "prescribed" means prescribed by the Board.

(14) deals with the application to Scotland.

* * * * *

FOURTH SCHEDULE.

S. 55.

MATTERS TO BE DEALT WITH BY GENERAL PROVISIONS PRESCRIBED BY THE LOCAL GOVERNMENT BOARD.

1. Streets, roads, and other ways, and stopping up, or diversion of existing highways.
2. Buildings, structures, and erections.
3. Open spaces, private and public.

(r) Repealed: 9 & 10 Geo. 5, c. 35, s. 11 (1).

(s) As to the effect of Acquisition of Land (Assessment of Compensation) Act, 1919, see *ante*, p. 354.

4. The preservation of objects of historical interest or natural beauty.

5. Sewerage, drainage, and sewage disposal.

6. Lighting.

7. Water supply.

8. Ancillary or consequential works.

9. Extinction or variation of private rights of way and other easements.

10. Dealing with or disposal of land acquired by the responsible authority or by a local authority.

11. Power of entry and inspection.

12. Power of the responsible authority to remove, alter, or demolish any obstructive work.

13. Power of the responsible authority to make agreements with owners, and of owners to make agreements with one another.

14. Power of the responsible authority or a local authority to accept any money or property for the furtherance of the objects of any town planning scheme, and provision for regulating the administration of any such money or property and for the exemption of any assurance with respect to money or property so accepted from enrolment under the Mortmain and Charitable Uses Act, 1888.

51 & 52 Vict.
c. 42.

15. Application with the necessary modifications and adaptations of statutory enactments.

16. Carrying out and supplementing the provisions of this Act for enforcing schemes.

17. Limitation of time for operation of scheme.

18. Co-operation of the responsible authority with the owners of land included in the scheme or other persons interested (*t*).

19. Charging on the inheritance of any land the value of which is increased by the operation of a town planning scheme the sum required to be paid in respect of that increase, and for that purpose applying, with the necessary adaptations, the provisions of any enactments dealing with charges for improvements of land.

S. 56.

FIFTH SCHEDULE.

1. Procedure anterior to *the preparation or adoption of (u) a scheme*:—

(a) *Preparation and deposit of plans (u).*

(b) Publication of notices.

2. Procedure during, on, and after the preparation or adoption and before the approval of the scheme:—

(a) Submission to the Local Government Board of the proposed scheme, with plans and estimates.

(b) Notice of submission of proposed scheme to the Local Government Board.

(*t*) Certain words here repealed: 9 & 10 Geo. 5, c. 35, Sched. 3.

(*u*) 9 & 10 Geo. 5, c. 35, Sched. 3.

- (c) Hearing of objections and representations by persons affected, including persons representing architectural or archæological societies or otherwise interested in the amenity of the proposed scheme.
- (d) Publication of notice of intention to approve scheme and the lodging of objections thereto.
- 3. Procedure after the approval of the scheme:—
 - (a) Notice to be given of approval of scheme.
 - (b) Inquiries and reports as to the beginning and the progress and completion of works, and other action under the scheme.
- 4. Duty, at any stage, of the local authority to publish or deposit for inspection any scheme or proposed scheme, and the plans relating thereto, and to give information to persons affected with reference to any such scheme or proposed scheme.
- 5. The details to be specified in plans, including, wherever the circumstances so require, the restrictions on the number of buildings which may be erected on each acre, and the height and character of those buildings.



THE HOUSING, TOWN PLANNING, &c. ACT, 1919.

9 & 10 GEO. 5, c. 35.

1. * * * *

Provided that local authorities in preparing, and the Local Government Board in approving, any scheme shall take into account, and so far as possible preserve, existing erections of architectural, historic, or artistic interest, and shall have regard to the natural amenities of the locality, and, in order to secure that the houses proposed to be built under the scheme shall be of a suitable architecture and that the natural amenities of the locality shall not be unnecessarily injured, the Local Government Board may, in any case where it appears to them that the character of the locality renders such a course expedient, require as a condition of their approval the employment by the local authority of an architect to be selected from a panel of architects nominated for the purpose by the Royal Institute of British Architects.

3—6 (give powers to county councils and Local Government Board to act in place of local authorities).

* * * *

Provisions as to the Acquisition and Disposal of Land, &c. (x).

9.—(1) Where land included in any scheme made or to be made under Part I. or Part II. of the principal Act (other than land included in such a scheme only for the purpose of making the scheme

Provisions as to assessment of compensation.

(x) See also the Acquisition of Land (Assessment of Compensation) Act, 1919, *ante*, p. 478.

efficient and not on account of the sanitary condition of the premises thereon or of those premises being dangerous or prejudicial to health) is acquired compulsorily, the compensation to be paid for the land, including any buildings thereon, shall be the value at the time the valuation is made of the land as a site cleared of buildings and available for development in accordance with the requirements of the building byelaws for the time being in force in the district:.

Provided that, if in the opinion of the Local Government Board it is necessary that provision should be made by the scheme for the re-housing of persons of the working classes on the land or part thereof when cleared, or that the land or a part thereof when cleared should be laid out as an open space, the compensation payable to all persons interested in any land included in the scheme (other than as aforesaid) for their respective interests therein shall be reduced by an amount ascertained in accordance with the rules set forth in the First Schedule to this Act.

(2) The provisions of sections twenty-one and forty-one of the principal Act shall cease to apply as respects lands to which the provisions of this section apply, in so far as such first-mentioned provisions are inconsistent or in conflict with the provisions of this section.

Power of
entry on land
acquired.

10.—(1) Where an order authorising a local authority to purchase land compulsorily for the purposes of Part III. of the principal Act has been made and confirmed under the provisions of Part I. of the Housing, Town Planning, &c. Act, 1909 (*y*), then, at any time after notice to treat has been served, the local authority may, after giving not less than fourteen days' notice to the owner and occupier of the land, enter on and take possession of the land or such part thereof as is specified in the notice without previous consent or compliance with sections eighty-four to ninety of the Lands Clauses (Consolidation) Act, 1845, but subject to the payment of the like compensation for the land of which possession is taken and interest on the compensation awarded as would have been payable if those provisions had been complied with.

8 & 9 Vict.
c. 18.

(2) Where a local authority have agreed to purchase land for the purposes of Part III. of the principal Act, or have determined to appropriate land for those purposes, subject to the interest of the person in possession thereof, and that interest is not greater than that of a tenant for a year or from year to year, then, at any time after such agreement has been made, or such appropriation has been approved by the Local Government Board, the local authority may, after giving not less than fourteen days' notice to the person so in possession, enter on and take possession of the land or such part thereof as is specified in the notice without previous consent but subject to the payment to the person so in possession of the like compensation with such interest thereon as aforesaid as if the local authority had been authorised to purchase the land compulsorily and such person had in pursuance of such power been required to quit

possession before the expiration of his term or interest in the land, but without the necessity of compliance with sections eighty-four to ninety of the Lands Clauses (Consolidation) Act, 1845 (z).

11.

* * * * *

Amendment
of procedure
for compul-
sory acqui-
sition of land.

(2) Where the confirming of an order made under that schedule (a) is opposed, the Local Government Board shall, before confirming the order, duly consider the report of the person by whom, under paragraph (6) of the said schedule, a public inquiry is held, and the Local Government Board shall not confirm any order for the compulsory acquisition of land under that schedule, even when the order is unopposed, if they are of opinion that the land is unsuited for the purpose for which it is proposed to be acquired.

(3) Notwithstanding the provisions of paragraph (6) of the First Schedule to the Housing, Town Planning, &c. Act, 1909, any order for the compulsory acquisition of land which is duly submitted after the date of the passing of this Act, and before the expiration of two years from that date, by a local authority under the provisions of Part I. of the Housing, Town Planning, &c. Act, 1909, may be confirmed by the Local Government Board without a public inquiry.

(4) The amendments to the said schedule effected by this Act shall apply to that schedule as originally enacted but not as applied by any other enactment.

12.—(1) The powers of a local authority to acquire land for the purposes of Part III. of the principal Act (b) shall be deemed to include power—

Additional
powers as to
acquisition
of land and
houses.

(a) to acquire any houses or other buildings on the land proposed to be acquired as a site for the erection of houses for the working classes; and

(b) to acquire any estate or interest in any houses which might be made suitable as houses for the working classes, together with any lands occupied with such houses;

and the local authority shall have power to alter, enlarge, repair and improve any such houses or buildings so as to render them in all respects fit for habitation as houses for the working classes.

(2) The purposes for which land may be acquired under Part III. of the principal Act shall be deemed to include—

(a) the lease or sale of the land, under the powers conferred by this Act, with a view to the erection thereon of houses for the working classes by persons other than the local authority; and

(b) the lease or sale under the powers conferred by this Act of any part of the land acquired with a view to the use thereof for purposes which in the opinion of the local authority are necessary or desirable for or incidental to the development of the land as a building estate, including the provision, maintenance, and improvement of houses and gardens,

(z) *Ante*, p. 412.

(a) 9 Edw. 7. c. 44, Sched. 1.

(b) *Ante*, p. 539.

factories, workshops, places of worship, places of recreation, and other works or buildings for or for the convenience of persons belonging to the working classes and other persons.

(3) Subject to the consent of the Local Government Board and to such conditions as the Board may prescribe, a local authority may, for the purposes of Part III. of the principal Act, contract for the purchase by or lease to them of houses suitable for the working classes, whether built at the date of the contract or intended to be built thereafter.

Power to acquire in advance lands in areas proposed for inclusion in improvement schemes under Parts I. and II. of principal Act.

13. Where a local authority have under section four of the principal Act passed a resolution that an area is an unhealthy area and that an improvement scheme ought to be made in respect of such area, or have under section thirty-nine of the principal Act passed a resolution directing a scheme to be prepared for the improvement of an area, the local authority may, with the consent of and subject to any conditions imposed by the Local Government Board, acquire by agreement any lands included within the area notwithstanding that the scheme may not at the time of acquisition have been made by the local authority or confirmed or sanctioned by the Local Government Board; and the acquisition of such lands shall be deemed to be a purpose for which the local authority may borrow money under and subject to the provisions of Part I. or, as the case may be, Part II. of the principal Act.

Power to acquire water rights. 38 & 39 Vict. c. 55.

14. A local authority or a county council may, notwithstanding anything in section three hundred and twenty-seven or section three hundred and thirty-two of the Public Health Act, 1875 (*c*), but subject to the provisions of section fifty-two (*d*) of that Act, be authorised to abstract water from any river, stream, or lake, or the feeders thereof, whether within or without the district of the local authority or the county, for the purpose of affording a water supply for houses provided or to be provided under a scheme made under the Housing Acts, and to do all such acts as may be necessary for affording a water supply to such houses, subject to a prior obligation of affording a sufficient supply of water to any houses or agricultural holdings or other premises that may be deprived thereof by reason of such abstraction, in like manner and subject to the like restrictions as they may be authorised to acquire land for the purposes of the scheme:

Provided that no local authority or county council shall be authorised under this section to abstract any water which any local authority, corporation, company, or person are empowered by Act of Parliament to impound, take or use for the purpose of supply within any area, or any water the abstraction of which would, in the opinion of the Local Government Board, injuriously affect the working or management of any canal or inland navigation.

Powers of dealing with land acquired.

15.—(1) Where a local authority have acquired or appropriated any land for the purposes of Part III. of the principal Act, then,

(*c*) *Ante*, p. 512.

(*d*) *Ante*, p. 342.

without prejudice to any of their other powers under that Act, the authority may—

- (a) lay out and construct public streets or roads and open spaces on the land;
- (b) with the consent of the Local Government Board sell or lease the land or part thereof to any person for the purpose and under the condition that that person will erect and maintain thereon such number of houses suitable for the working classes as may be fixed by the local authority in accordance with plans approved by them, and when necessary will lay out and construct public streets or roads and open spaces on the land, or will use the land for purposes which, in the opinion of the local authority, are necessary or desirable for or incidental to the development of the land as a building estate in accordance with plans approved by the local authority, including the provision, maintenance, and improvement of houses and gardens, factories, workshops, places of worship, places of recreation and other works or buildings for, or for the convenience of, persons belonging to the working classes and other persons;
- (c) with the consent of the Local Government Board sell the land or exchange it for land better adapted for those purposes, either with or without paying or receiving any money for equality of exchange;
- (d) with the consent of the Local Government Board sell or lease any houses on the land or erected by them on the land, subject to such covenants and conditions as they may think fit to impose either in regard to the maintenance of the houses as houses for the working classes or otherwise in regard to the use of the houses, and upon any such sale they may, if they think fit, agree to the price being paid by instalments or to payment of part thereof being secured by a mortgage of the premises:

Provided that it shall be a condition of such sale or lease that the houses shall not be used by any person for the time being having any interest therein for the purpose of housing persons in his employment.

(2) Where a local authority under this section sell or lease land subject to any condition as to the erection thereon of houses, or the laying out and construction of streets or the development of the land, there shall be included in the conveyance or lease all such covenants and conditions as may be necessary to secure compliance with the condition aforesaid within a reasonable period, and to limit the amount of the rent which may be charged in respect of the land or any part thereof or in respect of the houses erected thereon; and the local authority may contribute or agree to contribute towards the expenses of the development of the land and the laying out and construction of streets thereon, subject to the condition that the streets are dedicated to the public.

(3) Land and houses sold or leased under the provisions of this section shall be sold or leased at the best price or for the best rent that can reasonably be obtained, having regard to any condition imposed, and any capital money received in respect of any transaction under this section shall be applied in or towards the purchase of other land for the purposes of Part III. of the principal Act, or with the consent of the Local Government Board to any purpose, including the repayment of borrowed money, to which capital money may be properly applied.

Power of
Local Gov-
ernment
Board to
assist in pre-
paration of
schemes.

16. For the purpose of assisting in the preparation and carrying out of schemes under this Act, or for the purpose of securing the immediate provision of dwelling accommodation in the area of any local authority pending the preparation of a scheme by such authority, the Local Government Board may, with the consent of the Treasury, acquire and hold lands and buildings, erect buildings, alter, enlarge, repair, and improve buildings, and dispose of any lands or buildings so acquired or erected, and for such purposes the Board may exercise any of the powers of a local authority under the Housing Acts in regard to the acquisition and disposal of land and buildings.

* * * * *

Provisions for the assistance of public utility societies, housing trusts, and other persons.

Powers of
promoting
and assisting
public utility
societies.

18.—(1) A local authority within the meaning of Part III. of the principal Act, or a county council, may promote the formation or extension of or, subject to the provisions of this section, assist a public utility society whose objects include the erection, improvement or management of houses for the working classes, and where such a society is desirous of erecting houses for the working classes which, in the opinion of the Local Government Board, are required, and the local authority of the area in which the houses are proposed to be built are unwilling to acquire land with a view to selling or leasing the same to the society, the county council, on the application of the society, may for this purpose acquire land and exercise all the powers of a local authority under the Housing Acts in regard to the acquisition and disposal of land, and the provisions of those Acts as to the acquisition of land by local authorities within the meaning of Part III. of the principal Act shall apply accordingly.

* * * * *

Power to
authorise
conversion
of a house
into several
tenements.

27. Where it is proved to the satisfaction of the county court on an application by the local authority or any person interested in a house that, owing to changes in the character of the neighbourhood in which such house is situate, the house cannot readily be let as a single tenement but could readily be let for occupation if converted into two or more tenements, and that, by reason of the provisions of the lease or of any restrictive covenant affecting the house or otherwise, such conversion is prohibited or restricted, the court, after giving any person interested an opportunity of being heard, may vary the terms of the lease or other instrument imposing the pro-

hibition or restriction so as to enable the house to be so converted subject to such conditions and upon such terms as the court may think just (e).

* * * * *

36. Notwithstanding anything in section fifty of the Brine Pumping (Compensation for Subsidence) Act, 1891 (f), a local authority or county council shall be entitled to compensation in accordance with the provisions of that Act in respect of any injury or damage to any houses belonging to such local authority or council, and provided under a housing scheme towards the losses on which the Local Government Board is liable to contribute under this Act.

Compensation in cases of subsidence.
54 & 55 Vict. c. 40.

* * * * *

41.—(1) For the purposes of the application of Part III. of the principal Act to the county of London—

Application to London of certain provisions of the Housing Acts.

(a) the London County Council shall be the local authority for the county, to the exclusion of any other authority, so far as regards the provision of any houses outside the administrative county of London;

(b) the council of a metropolitan borough shall be the local authority for the metropolitan borough, to the exclusion of any other authority, so far as regards the provision of houses within the metropolitan borough:

Provided—

(i) that nothing in this section shall prejudice or affect the rights, powers and privileges of the London County Council in regard to any lands, buildings or works acquired, provided or carried out by the County Council before the date of the passing of this Act; and

(ii) that where the London County Council are satisfied that there is situate within the area of a metropolitan borough land suitable for development for housing, the county council may submit a scheme for the approval of the Local Government Board for the development of such land to meet the needs of districts situate outside the area of such borough, and the county council may carry into effect any scheme which is so approved, and such approval shall have the like effect as if it had been given under section one of this Act;

(c) the Local Government Board may by order direct that any of the powers or duties of the council of a metropolitan borough under Part III. of the principal Act shall be transferred to the London County Council, or that any of the powers or duties of the London County Council under Part III. of the principal Act shall be transferred to the council of a metropolitan borough.

* * * * *

(e) Which would, presumably, include compensation.

(f) *Ante*, p. 387.

PART II.

TOWN PLANNING.

* * * * *

Extension of
power to make
regulations as
to procedure.

43.—(1) The power of the Local Government Board of making regulations under section fifty-six of the Act of 1909 shall include power to make regulations as to the procedure consequent on the passing of a resolution by a local authority to prepare or adopt a town planning scheme, and provision shall be made by those regulations for securing that a local authority after passing such a resolution shall proceed with all reasonable speed with the preparation or adoption of the town planning scheme, and shall comply with any regulations as to steps to be taken for that purpose, including provisions enabling the Local Government Board in the case of default or dilatoriness on the part of the local authority to act in the place and at the expense of the local authority.

* * * * *

Power to
permit deve-
lopment of
estates pend-
ing prepara-
tion and
approval of
town plan-
ning schemes.

45. The Local Government Board may by special or general order provide that where a resolution to prepare or adopt a town planning scheme has been passed, or where before the passing of this Act the preparation or adoption of a town planning scheme has been authorised, the development of estates and building operations may be permitted to proceed pending the preparation or adoption and approval of the town planning scheme, subject to such conditions as may be prescribed by the order, and where such permission has been given the provisions of subsection (2) of section fifty-eight of the Act of 1909 (*g*) which relates to the rights of compensation shall have effect as if the following proviso were added thereto:

“Provided also that this provision shall not apply as respects any building erected, contract made, or other thing done in accordance with a permission granted in pursuance of an order of the Local Government Board allowing the development of estates and building operations to proceed pending the preparation or adoption and approval of the scheme, and the carrying out of works so permitted shall not prejudice any claim of any person to compensation in respect of property injuriously affected by the making of the scheme.”

* * * * *

(*g*) *Ante*, p. 552.

FIRST SCHEDULE.

S. 9.

RULES FOR DETERMINING THE AMOUNT OF REDUCTION OF
COMPENSATION.

(a) The value of the whole of the land included in the scheme shall first be ascertained on the basis of its value as a cleared site available for development in accordance with the requirements of the building byelaws in force in the district.

(b) The value of the whole of the said land shall next be ascertained on the basis of its value as a cleared site subject to the requirements of the scheme as to the provision to be made for the rehousing of persons of the working-classes or the laying out of open spaces on the land or any part thereof.

(c) The difference between the amounts ascertained under paragraph (a) and paragraph (b) shall then be computed.

(d) The amount by which the compensation payable for the respective interests in the land to which section nine of this Act applies, as ascertained in accordance with the principle laid down in that section, is to be reduced shall be a fraction thereof equal to the amount arrived at under paragraph (c) when divided by the amount arrived at under paragraph (a).

Section V. (h).—Agriculture and Allied Purposes.

THE SMALL HOLDINGS AND ALLOTMENTS ACT,
1908.

8 EDW. 7, c. 36.

PART I.

SMALL HOLDINGS.

Provision of Small Holdings.

1. A county council may if they are of opinion that there is such a demand for small holdings in their county as justifies them in putting into operation this Part of this Act, and shall, if so required by a scheme under this Act, provide small holdings for persons who desire to buy or lease and will themselves cultivate the holdings.

Powers and duties of providing small holdings.

Schemes as to the provision of Small Holdings.

* * * * *

5.—(1) A copy of any draft scheme shall if prepared by a county council be sent to the Board, and if prepared by the Commissioners

Procedure as to schemes.

(h) See Book II., Chap. VI., *ante*, p. 370.

be sent to the Board and to any county council concerned, and the draft scheme and any modifications therein which the Board may propose to make shall be published and advertised together with notice of the time within and manner in which objections are to be sent to the Board in such manner as the Board think best adapted for informing the persons affected and for insuring publicity.

(2) The Board shall consider the draft scheme and any objections thereto duly made, and may in any case and shall if the county council object to the scheme, or, in the case of a scheme prepared by the council, to any modifications therein which the Board propose to make, hold a public local inquiry, at which the county council, and such other persons as the person holding the inquiry may in his discretion think fit to allow, shall be permitted to appear and be heard.

(3) The Board, after considering the objections and the report of the person holding the inquiry (if any), may settle and confirm the scheme either without modification or subject to such modifications as the Board think fit, or may annul the scheme (i).

6. * * * * *

(2) If the county council fail so to fulfil their obligations, the Board shall by order direct the Commissioners to take such steps as may be necessary for carrying the scheme into effect, and upon such order being made the Commissioners shall for the purpose have all the powers of a county council under the provisions of this Act relating to small holdings, and those provisions shall apply as if references to the Commissioners were substituted for references to a county council:

* * * * *

(3) Any order made by the Board directing the Commissioners to carry a scheme into effect shall be laid before both Houses of Parliament as soon as may be after it is made.

* * * * *

Powers of County Councils in relation to the provision of Small Holdings.

Power to
acquire land
for small
holdings.

7.—(1) A county council may, for the purpose of providing small holdings for persons who desire to buy or lease and will themselves cultivate the holdings, by agreement purchase or take on lease land, whether situate within or without their county.

(2) If a county council are unable to acquire by agreement and on reasonable terms suitable land for the purpose of providing small holdings for persons who desire to lease small holdings, they may for that purpose acquire land compulsorily in accordance with the provisions of this Act relating to compulsory acquisition of land.

(3) (k).

* * * * *

(i) But sec 9 & 10 Geo. 5, c. 59, s. 1, *post*, p. 591.

(k) Repealed: 9 & 10 Geo. 5, c. 59, s. 10 (2).

15. If, at any time after the restrictive conditions imposed by this Act have ceased to attach to a small holding, the owner of the holding desires to use the holding for purposes other than agriculture, he shall before so doing, whether the holding is situate within a town or built upon or not, offer the holding for sale, first to the county council from whom the holding was purchased, and secondly to the person or persons (if any) then entitled to the lands from which the holding was originally severed, and sections one hundred and twenty-seven to one hundred and thirty of the Lands Clauses Consolidation Act, 1845, shall apply as if the owner of the small holding were the promoter of the undertaking, and the holding were superfluous lands within the meaning of those sections.

Right of purchase, if land diverted from agriculture.

8 & 9 Vict. c. 18.

16 (l).

* * * * *

Powers of Board of Agriculture and Fisheries.

20. The Board may, if after inquiry they think it advisable to do so with a view to demonstrating the feasibility of the establishment of small holdings in any locality, exercise the powers conferred on county councils by the provisions of this Act relating to small holdings (except the powers of acquiring land compulsorily and of borrowing), and those provisions shall apply as if references to the Board were substituted for references to a county council; but the expenses of the Board shall be defrayed out of, and their receipts paid into, the Small Holdings Account, and no part thereof shall be paid out of any rate.

Power of Board to provide small holdings.

* * * * *

PART II.

ALLOTMENTS.

Provision of Allotments.

23.—(1) If the council of any borough, urban district, or parish are of opinion that there is a demand for allotments in the borough, urban district, or parish, the council shall provide a sufficient number of allotments, and shall let such allotments to persons in the borough, district, or parish, and desiring to take the same (m).

Duty of certain councils to provide allotments.

24.

* * * * *

(2) The county council, if satisfied that the circumstances are such that land for allotments should be acquired by them under this section, shall pass a resolution to that effect, and thereupon the powers and duties of the district or parish council under the provisions of this Act relating to allotments shall be transferred from that council to the county council, and the county council, in substitution for that

(l) Repealed: 9 & 10 Geo. 5, c. 59, s. 12 (2).

(m) Certain words repealed in this section: 9 & 10 Geo. 5, c. 59, Sched. 3.

council, shall proceed to acquire land in accordance with this Act, and otherwise execute this Act in the district or parish:

* * * * *

(4) If the Board are, in relation to any urban district or rural parish, satisfied, after holding a local inquiry at which the county council and the council of the district or parish, and such other persons as the person holding the inquiry may in his discretion think fit to allow, shall be permitted to appear and be heard, that the county council have failed to fulfil their obligations under this section, the Board may by order transfer to the Commissioners all or any of the powers of the county council under this section in relation to the district or parish, and this section shall apply as if references to the Commissioners were substituted for references to the county council and with such other adaptations as may be made by the order.

Powers of Councils in relation to the provision of Allotments.

Acquisition of land for purpose of Act.

25.—(1) The council of a borough, urban district, or parish may, for the purpose of providing allotments, by agreement purchase or take on lease land, whether situate within or without their borough, district, or parish.

(2) If a council are unable to acquire by agreement, and on reasonable terms, suitable land for the purpose of allotments, they may acquire land compulsorily in accordance with the provisions of this Act relating to compulsory acquisition of land.

* * * * *

Sale of superfluous or unsuitable land.

32.—(1) Where the council of any borough, urban district, or parish are of opinion that any land acquired by them for allotments or any part thereof is not needed for the purpose of allotments, or that some more suitable land is available, they may, with the sanction of the county council, sell or let such land otherwise than under the provisions of this Act, or exchange the land for other land more suitable for allotments, and may pay or receive money for equality of exchange.

(2) The proceeds of a sale under this Act of land acquired for allotments, and any money received by the council on any such exchange as aforesaid by way of equality of exchange, shall be applied in discharging, either by way of a sinking fund or otherwise, the debts and liabilities of the council in respect of the land acquired by the council for allotments, or in acquiring, adapting, and improving other land for allotments, and any surplus remaining may be applied for any purpose for which capital money may be applied, and which is approved by the Local Government Board; and the interest thereon (if any) and any money received from the letting of the land may be applied in acquiring other land for allotments, or shall be applied in like manner as receipts from allotments under this Act are applicable.

(3) (n).

* * * * *

(n) Repealed: 9 & 10 Geo. 5, c. 59, Sched. 3.

Supplemental.

34.—(1) Where it appears to the council of any borough, urban district, or parish that, as regards their borough, district, or parish, land can be acquired for affording common pasture at such price or rent that all expenses incurred by the council in acquiring the land and otherwise in relation to the land when acquired may reasonably be expected to be recouped out of the charges paid in respect thereof, and that the acquisition of such land is desirable in view of the wants and circumstances of the population, the council may submit to the council of the county in which the borough, district, or parish is wholly or partly situate a scheme for providing such common pasture.

Power to make scheme for provision of common pasture.

(2) The county council, if satisfied of the expediency of such scheme, may by order authorise the council which submitted it to carry it into effect, and, upon such an order being made, the provisions of this Act relating to allotments shall, with the necessary modifications, apply in like manner as if "allotments" in those provisions included common pasture, and "rent" included a charge for turning out an animal:

Provided that the rules made under those provisions may extend to regulating the turning out of animals on the common pasture, to defining the persons entitled to turn them out, the number to be turned out, and the conditions under which animals may be turned out, and fixing the charges to be made for each animal, and otherwise to regulating the common pasture.

* * * * *

36. The powers as to allotments conferred on borough, urban district, and parish councils by this Act may in London be exercised by the London County Council, and the provisions of this Act as to allotments shall apply accordingly, except that, subject to the provisions of this Act, the expenses shall be defrayed and money borrowed under and in accordance with the provisions of the Local Government Act, 1888.

Application to London.

51 & 52 Vict. c. 41.

37. Such of the provisions of this Part of this Act as require the sanction of, submission to, or order of, a county council shall not apply in the case of a county borough.

Application to county boroughs.

PART III.

GENERAL.

Acquisition of Land.

38. For the purpose of the purchase of land by agreement under this Act by a council, the Lands Clauses Acts shall be incorporated with this Act, except the provisions of those Acts with respect to the purchase and taking of land otherwise than by agreement, and section one hundred and seventy-eight of the Public Health Act, 1875, shall apply as if the council were referred to therein.

Purchase of land by agreement.

38 & 39 Vict. c. 55.

39.—(1) Where a council propose to purchase land compulsorily under this Act, the council may, subject to the provisions of Part I. of the First Schedule to this Act, submit to the Board an order putting

Procedure for compulsory acquisition of land.

in force as respects the land specified in the order the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.

(2) Where a council propose to hire land compulsorily, the council may submit to the Board an order for the compulsory hiring of the land specified in the order for a period not less than fourteen nor more than thirty-five years, and the provisions of Part I. of the First Schedule to this Act shall apply to the order in like manner as it applies to an order for compulsory purchase, with the substitution of "hiring" for "purchase," and with the modifications set out in Part II. of that Schedule.

(3) An order under this section shall be of no force unless and until it is confirmed by the Board, and the Board may, subject to the provisions of the First Schedule to this Act, confirm the order either without modification or subject to such modifications as they think fit, and an order when so confirmed shall become final and have effect as if enacted in this Act; and the confirmation by the Board shall be conclusive evidence that the requirements of this Act have been complied with, and that the order has been duly made and is within the powers of this Act.

(4) An order under this section may provide for the continuance of any existing easement or the creation of any new easement over the land authorised to be acquired, and every such order shall, if so required by the owner of the land to be acquired, provide for the creation of such new easements as are reasonably necessary to secure the continued use and enjoyment by such owner and his tenants of all means of access, drainage, water supply, and other similar conveniences theretofore used or enjoyed by them over the land to be acquired: Provided that, notwithstanding anything contained in this subsection, no new easement created by or in pursuance of the order over land hired by a council shall continue beyond the determination of such hiring.

(5) In determining the amount of any disputed compensation under any such order, no additional allowance shall be made on account of the purchase or hiring being compulsory.

(6) Where land authorised to be compulsorily hired by an order under this section is subject to a mortgage, any lease made in pursuance of the order by the mortgagor or mortgagee in possession shall have the like effect as if it were a lease authorised by section eighteen of the Conveyancing and Law of Property Act, 1881.

(7) Where the council proposing to acquire land compulsorily is a parish council, the council shall, instead of themselves making and submitting to the Board the order, represent the case to the county council, and thereupon the county council may, on behalf of the parish council, exercise the powers in relation to compulsory purchase or hiring conferred on councils by this Act, and the order shall be carried into effect by the county council, but the land shall be assured or demised to the parish council, and all expenses incurred by the county council shall be paid by the parish council:

Provided that, if the parish council are aggrieved by the refusal

of the county council to proceed under this section, the parish council may petition the Board, and thereupon the Board, after such inquiry as they think fit, may make such an order as the county council might have made, and this subsection shall apply as if the order had been made by the county council.

(8) If, after the determination of the amount of the compensation (including in the case of land hired compulsorily the rent) to be paid to any person in respect of his interest in the land proposed to be compulsorily acquired, it appears to the council that the land cannot be let for small holdings or allotments, as the case may be, at such a rent as will secure the council from loss, the council may at any time within six weeks after the determination of the amount by notice in writing withdraw any notice to treat served on that person or on any other person interested in the land, and in such case any person on whom such a notice of withdrawal has been served shall be entitled to obtain from the council compensation for any loss or expenses which he may have sustained or incurred by reason or in consequence of the notice to treat and of the notice of withdrawal, and the amount of such compensation shall, in default of agreement, be determined by arbitration:

Provided that in every case in which the notice of withdrawal is given by the Commissioners acting in default of the council all compensation payable under this subsection shall be paid out of the Small Holdings Account.

40.—(1) Any person having power to lease land for agricultural purposes for a limited term, whether subject to any consent or conditions or not, may, subject to the like consent and conditions (if any), lease land to a council for the purposes of small holdings or allotments for a term not exceeding thirty-five years, either with or without such right of renewal as is conferred by this Act in the case of land hired compulsorily for those purposes.

Powers of certain limited owners to sell and lease land for small holdings or allotments.

(2) The like powers of leasing may be exercised, in the case of land belonging to the Crown, by the Commissioners of Woods, with the consent of the Treasury, in the case of land forming part of the possessions of the Duchy of Lancaster, by the Chancellor and Council of the Duchy of Lancaster by deed under the seal of the Duchy in the name of His Majesty His heirs and successors, and, in the case of land forming part of the possessions of the Duchy of Cornwall, by the Duke of Cornwall or other the persons for the time being having power to dispose of land belonging to that Duchy.

(3) The like powers of leasing may be exercised in the case of glebe land or other land belonging to an ecclesiastical benefice by the incumbent thereof with the consent of the Ecclesiastical Commissioners alone upon such terms and conditions and in such manner as the Ecclesiastical Commissioners may approve.

(4) Where a person having the powers of a tenant for life within the meaning of the Settled Land Acts, 1882 to 1890, sells, exchanges, or leases any settled land to a county council for the purposes of small holdings, the sale, exchange, or lease may be made at such a price, or for such consideration, or at such rent, as, having regard

to the said purposes and to all the circumstances of the case, is the best that can be reasonably obtained.

(5) A person having the powers of a tenant for life within the meaning of the Settled Land Acts, 1882 to 1890, may grant the settled land, or a part thereof, to a county council for the purposes of small holdings in perpetuity, at a fee farm or other rent secured by condition of re-entry, or otherwise as may be agreed upon.

Restrictions
on the ac-
quisition of
land.

41 (o).—(1) No land shall be authorised by an order under this Act to be acquired compulsorily which at the date of the order forms part of any park, garden, or pleasure ground, or forms part of the home farm attached to and usually occupied with a mansion house, or is otherwise required for the amenity or convenience of any dwelling-house, or which is woodland not wholly surrounded by or adjacent to land acquired by a council under this Act, or which at that date is the property of any local authority or has been acquired by any corporation or company for the purposes of a railway, dock, canal, water, or other public undertaking, or is the site of an ancient monument or other object of archaeological interest.

(2) A council in making, and the Board in confirming, an order for the compulsory acquisition of land shall have regard to the extent of land held or occupied in the locality by any owner or tenant and to the convenience of other property belonging to or occupied by the same owner or tenant, and shall, so far as practicable, avoid taking an undue or inconvenient quantity of land from any one owner or tenant, and for that purpose, where part only of a holding is taken, shall take into consideration the size and character of the existing agricultural buildings not proposed to be taken which were used in connection with the holding, and the quantity and nature of the land available for occupation therewith, and shall also, so far as practicable, avoid displacing any considerable number of agricultural labourers or others employed on or about the land.

(3) (p).

Grazing
rights, &c. to
be attached
to small
holdings or
allotments.

42.—(1) The powers of a council to acquire land for small holdings or allotments shall, subject to the restrictions by this Act imposed, include power to acquire land for the purpose of *letting to tenants of small holdings and allotments* (q) provided by the council rights of grazing and other similar rights over the land so acquired, and to acquire for that purpose stints and other alienable common rights of grazing.

(2) Any rights created or acquired by the council under this section shall be *let to tenants of* (q) small holdings or allotments in such manner and subject to such regulations as the council think expedient.

(3) Where any right of grazing, sheepwalk, or other similar right is attached to land acquired by a county council for the purposes of small holdings, the council may attach any share of the right to any

(o) See 9 & 10 Geo. 5, c. 59, s. 16, *post*, p. 594.

(p) Repealed: 9 & 10 Geo. 5, c. 59, Sched. 3.

(q) 9 & 10 Geo. 5, c. 59, Sched. 2.

small holding in such manner and subject to such regulations as they think expedient.

* * * * *

Provisions affecting Land acquired.

44.—(1) Where a council has hired land compulsorily for small holdings or allotments, the council may, by giving to the landlord not more than two years nor less than one year before the expiration of the tenancy notice in writing, renew the tenancy for such term, not being less than fourteen nor more than thirty-five years, as may be specified in the notice, and at such rent as, in default of agreement, may be determined by valuation by a valuer appointed by the Board, but otherwise on the same terms and conditions as the original lease, and so from time to time:

Power of council to renew tenancy of land compulsorily hired.

Provided that, if on any such notice being given, the landlord proves to the satisfaction of the Board that any land included in the tenancy is required for the amenity or convenience of any dwelling-house, then such land shall be excluded from the renewed tenancy.

(2) In assessing the rent to be paid under this section the valuer shall not take into account any increase in the value of the holding—

- (a) due to improvements in respect of which the council would have been entitled to compensation, if instead of renewing the tenancy the council had quitted the land on the determination of the tenancy; or
- (b) due to any use to which the land might otherwise be put during the renewed term, being a use in respect of which the landlord is entitled to resume possession of the land under this Act; or
- (c) due to the establishment by the council of other small holdings or allotments in the neighbourhood,

or any depreciation in the value of the land in respect of which the landlord would have been entitled to compensation if the council had so quitted the land as aforesaid.

* * * * *

46.—(1) Where land has been hired by a council compulsorily for small holdings or allotments, and the land or any part thereof at any time during the tenancy thereof by the council is shown to the satisfaction of the Board to be required by the landlord to be used for building, mining, or other industrial purposes, or for roads necessary therefor, it shall be lawful for the landlord to resume possession of the land or part thereof upon giving to the council twelve months' previous notice in writing of his intention so to do, or such shorter notice as may be required by the order of compulsory hiring of the land (r); and, if a part only of the land is resumed, the rent payable by the council shall as from the date of resumption be reduced by such sum as in default of agreement may be determined by valuation by a valuer appointed by the Board.

Power to resume possession of land hired compulsorily.

(2) Where the land has been hired compulsorily by the Commissioners acting in default of a county council, any question as to the right of the landlord to resume possession of the land or any part thereof under this section shall be determined by an arbitrator appointed by the Lord Chief Justice of England.

Compensation for improvements.

47.—(1) Where a council has let a small holding or allotment to any tenant, the tenant shall as against the council have the same rights with respect to compensation for the improvements mentioned in Part I. of the Second Schedule to this Act as he would have had if the holding had been a holding to which section forty-two of the Agricultural Holdings Act, 1908, applied:

Provided that the tenant shall not be entitled to compensation in respect of any such improvement if executed contrary to an express prohibition in writing by the council affecting either the whole or any part of the holding or allotment; but, if the tenant feels aggrieved by any such prohibition, he may appeal to the Board, who may confirm, vary, or annul the prohibition, and the decision of the Board shall be final.

(2) Where land has been hired by a council for small holdings or allotments, the council shall (*subject to any provision to the contrary in the agreement or order for hiring (s)*) be entitled at the determination of the tenancy on quitting the land to compensation under the Agricultural Holdings Act, 1908, for any improvement mentioned in Part I. of the Second Schedule to this Act, and for any improvement mentioned in Part II. of that Schedule which was necessary or proper to adapt the land for small holdings or allotments, as if the land were a holding to which section forty-two of the Agricultural Holdings Act, 1908, applied, and the improvements mentioned in Part II. of the said Schedule were improvements mentioned in Part III. of the First Schedule to the Agricultural Holdings Act, 1908:

Provided that, in the case of land hired compulsorily, the amount of the compensation payable to the council for those improvements shall be such sum as fairly represents the increase (if any) in the value to the landlord and his successors in title of the holding due to those improvements.

50 & 51 Vict.
c. 26.

(3) The tenant of an allotment to which Part II. of this Act applies may, if he so elects, claim compensation for improvements under the Allotments and Cottage Gardens Compensation for Crops Act, 1887, instead of under the Agricultural Holdings Act, 1908, as amended by this section, notwithstanding that the allotment exceeds two acres in extent.

(4) A tenant of any small holding or allotment may, before the expiration of his tenancy, remove any fruit and other trees and bushes planted or acquired by him for which he has no claim for compensation, and may remove any toolhouse, shed, greenhouse, fowl-house, or pigsty built or acquired by him for which he has no claim for compensation.

48. In the case of glebe land or other land belonging to an ecclesiastical benefice hired by a council for the purposes of small holdings or allotments—

Provisions
as to glebe
lands.

(1) The provisions of the Ecclesiastical Dilapidations Act, 1871, shall not during the continuance of the tenancy be applicable to the buildings upon the land:

34 & 35 Vict.
c. 43.

(2) At the determination of the tenancy, on the council quitting the land, or at any time within twelve months thereafter, the incumbent of the benefice to which the land belongs may apply to the Ecclesiastical Commissioners for their consent to the removal of any buildings which have been erected on the land for the purpose of adapting the land for small holdings or allotments, and, on proof to the satisfaction of the Commissioners that any such buildings are useless, and that it is to the interest of the benefice that they should be removed, the incumbent may, with the consent of the Commissioners, and subject to such directions as they may give, pull down any such buildings and dispose of the materials thereof, and any proceeds shall be paid to the Commissioners to be by them applied to the improvement of the benefice in such manner as the Commissioners may direct.

* * * * *

Supplemental.

55. Any land acquired by the Commissioners under this Act or any enactment repealed by this Act shall be vested in the Board, but the Board may at any time transfer the land to the council at whose expense the land was acquired, and shall so transfer the land on payment of all sums due from the council in connection therewith, and on proof to the satisfaction of the Board that the council are willing to exercise and perform their powers and duties in relation thereto.

Provisions
as to land
acquired by
Commis-
sioners.

* * * * *

58.—(1) All questions which under this Act are referred to arbitration shall, unless otherwise expressly provided by this Act, be determined by a single arbitrator in accordance with the Agricultural Holdings (England) Act, 1908.

Arbitrations
and valua-
tions.

(2) Where an order has been made and confirmed authorising the compulsory acquisition of land by the Commissioners acting in default of a county council, the arbitrator or valuer, as the case may be, shall be appointed by the Lord Chief Justice of England instead of by the Board.

(3) The remuneration of an arbitrator or valuer appointed under this Act shall be fixed by the Board.

* * * * *

61.—(1) For the purposes of this Act—

The expression "small holding" means an agricultural holding which exceeds one acre and either does not exceed fifty acres,

Interpreta-
tion.

or, if exceeding fifty acres, is at the date of sale or letting of an annual value for the purposes of income tax not exceeding fifty pounds:

The expression "allotment" includes a field garden:

The expressions "agriculture" and "cultivation" shall include horticulture and the use of land for any purpose of husbandry, inclusive of the keeping or breeding of live stock, poultry, or bees, and the growth of fruit, vegetables, and the like:

* * * * *

The expression "landlord," in relation to any land compulsorily hired by a council, means the person for the time being entitled to receive the rent of the land from the council.

(2) In this Act and in the enactments incorporated with this Act the expression "land" shall include any right or easement in or over land.

* * * * *

(5) Any notice required by this Act to be served or given may be sent by registered post.

* * * * *

SCHEDULES.

FIRST SCHEDULE.

PART I.

PROVISIONS AS TO THE COMPULSORY ACQUISITION OF LAND BY A COUNCIL.

(1) The order shall be in the prescribed form, and shall contain such provisions as the Board may prescribe for the purpose of carrying the order into effect, and of protecting the council and the persons interested in the land, and shall incorporate, subject to the necessary adaptations, the Lands Clauses Acts and sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, but subject to this modification, that any question of disputed compensation shall be determined by a single arbitrator appointed by the Board, who shall be deemed to be an arbitrator within the meaning of the Lands Clauses Acts, and the provisions of those Acts with respect to arbitration shall, subject to the provisions of this schedule, apply accordingly.

(2) The order shall be published by the council in the prescribed manner, and such notice shall be given both in the locality in which the land is proposed to be acquired and to the owners, lessees, and occupiers of that land, as may be prescribed.

(3) If within the prescribed period no objection to the order has been presented to the Board by a person interested in the land, or if every such objection has been withdrawn, the Board shall, without further inquiry, confirm the order, but, if such an objection has been presented and has not been withdrawn, the Board shall forthwith cause a public inquiry to be held in the locality in which the land is

S. 39.

8 & 9 Vict.
c. 20.

proposed to be acquired, and the council and all persons interested in the land and such other persons as the person holding the inquiry in his discretion thinks fit to allow shall be permitted to appear and be heard at the inquiry.

(4) Before confirming the order the Board shall consider the report of the person who held the inquiry, and all objections made thereat.

(5) The arbitrator shall, so far as practicable, in assessing compensation act on his own knowledge and experience, but, subject as aforesaid, at any inquiry or arbitration held under this schedule the person holding the inquiry or arbitration shall hear, by themselves or their agents, any authorities or parties authorised by or under this Act to appear, and shall hear witnesses, but shall not, except in such cases as the Board otherwise direct, hear counsel or expert witnesses.

(6) The Board may, with the concurrence of the Lord Chancellor, make rules fixing a scale of costs to be applicable on an arbitration under this schedule, and an arbitrator under this schedule may, notwithstanding anything in the Lands Clauses Acts, determine the amount of costs, and shall have power to disallow as costs in the arbitration the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers to have been caused or incurred unnecessarily.

(7) In construing, for the purposes of this schedule or any order made thereunder, any enactment incorporated with the order, this Act together with the order shall be deemed to be the special Act and the council shall be deemed to be the promoters of the undertaking.

(8) Where the land is glebe land or other land belonging to an ecclesiastical benefice the order shall provide that sums agreed upon or awarded for the purchase of the land, or to be paid by way of compensation for the damage to be sustained by the owner by reason of severance or other injury affecting the land, shall not be paid as directed by the Lands Clauses Acts, but shall be paid to the Ecclesiastical Commissioners to be applied by them as money paid to them upon a sale under the provisions of the Ecclesiastical Leasing Acts of land belonging to a benefice.

PART II.

S. 39.

PROVISIONS AS TO THE COMPULSORY HIRING OF LAND BY A COUNCIL.

(1) The Board shall make regulations for the purpose of carrying the order into effect and of protecting the council and the persons interested in the land, and the order shall incorporate such regulations, together with such provisions of the Lands Clauses Acts and of sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, as may, subject to the prescribed adaptations, appear to the Board necessary or expedient for that purpose.

(2) The order authorising the land to be hired compulsorily shall

determine the terms and conditions of the hiring other than the rent, and in particular—

- (a) shall provide for the insertion in the lease of covenants by the council to cultivate the land in a proper manner and to pay to the landlord at the determination of the tenancy on the council quitting the land compensation for any depreciation of the land by reason of any failure by the council, or any person deriving title under them, to observe such covenants, or by reason of any user of the land by the council or such person as aforesaid, and (unless otherwise agreed) to keep the buildings and premises demised in repair; and
 - (b) shall not authorise the breaking up of pasture unless the Board are satisfied that it can be so broken up without depreciating the value of the land, or that the circumstances are such that small holdings or allotments, as the case may be (t), cannot otherwise be successfully cultivated; and
 - (c) shall not, except with the consent of the landlord, confer on the council any right to fell or cut timber or trees or any right to take, sell, or carry away any minerals, gravel, sand, or clay, except so far as may be necessary or convenient for the purpose of erecting buildings on the land or otherwise adapting the land for small holdings or allotments, and except upon payment of compensation for minerals, gravel, sand, or clay so used.
- (3) The determination of—
- (a) The amount of the rent to be paid by the council for the land compulsorily hired;
 - (b) The amount of any other compensation to be paid by the council to any person entitled thereto in respect of the land or any interest therein, or in respect of improvements executed on the land or otherwise; and
 - (c) Where part only of a holding held for an unexpired term is hired, the rent to be paid for the residue of the holding during the remainder of that term;

shall in default of agreement be by valuation by a single valuer appointed by the Board: Provided that, if the land hired is in the occupation of a tenant, he may by notice in writing served on the council before the determination of his tenancy, require that any claim by him against the council which, under the Agricultural Holdings Act, 1908, might be referred to arbitration under that Act, shall be so referred, and in such case those claims shall be determined by arbitration under that Act and not by valuation under this Act.

(4) The valuer, in fixing the rent to be paid for the land compulsorily hired, shall take into consideration the rent (if any) at which the land has been let and the annual value at which the land is assessed for purposes of income tax or rating, the loss (if any) caused to the owner by severance, the terms and conditions of the hiring (including any reservation of sporting or fishing rights), and all the other cir-

(t) 9 & 10 Geo. 5, c. 59, Sched. 2.

circumstances connected with the land, but shall not make any allowance in respect of any use to which the land compulsorily hired might otherwise be put by the owner during the term of hiring, being a use in respect of which the owner is entitled to resume possession of the land under this Act.

(5) Any compensation awarded to a tenant in respect of any depreciation of the value to him of the residue of his holding caused by the withdrawal from the holding of the land compulsorily hired shall, as far as possible, be provided for by taking such compensation into account in fixing the rent to be paid for the residue of the holding during the remainder of the term for which it is held by the tenant.

(6) Any person interested in any valuation shall give the valuer all such assistance, information, and explanations as he may require, and shall produce to the valuer, or give him access to, all such books, accounts, vouchers, and other documents relating to the land to be compulsorily hired as he may reasonably require for the purposes of valuation, and such expenses *as the council shall consider or (u) as the valuer certifies to have been properly incurred by any person in furnishing such assistance, information, and explanations, or otherwise, in relation to the valuation, shall be paid by the council.*

(7) On the determination of any tenancy created by compulsory hiring any questions as to the amount due by the council for depreciation shall in default of agreement be determined by arbitration.

THE DEVELOPMENT AND ROAD IMPROVEMENT FUNDS ACT, 1909.

9 EDW. 7, c. 47.

PART I.

DEVELOPMENT.

1.—(1) The Treasury may, upon the recommendation of the Development Commissioners appointed under this Act, make advances to a Government department, or through a Government department to a public authority, university, college, school, or institution, or an association of persons or company not trading for profit, either by way of grant or by way of loan, or partly in one way and partly in the other, and upon such terms and subject to such conditions as they may think fit, for any of the following purposes:—

Power to make advances for certain purposes.

(a) Aiding and developing agriculture and rural industries by promoting scientific research, instruction and experiments in the science, methods and practice of agriculture (including the provision of farm-institutes), the organisation of co-operation, instruction in marketing produce, and the extension of the provision of small holdings; and by the

(u) 9 & 10 Geo. 5, c. 59, Sched. 2.

adoption of any other means which appear calculated to develop agriculture and rural industries;

- (b) Forestry (including (1) the conducting of inquiries, experiments, and research for the purpose of promoting forestry and the teaching of methods of afforestation; (2) the purchase and planting of land found after inquiry to be suitable for afforestation) (x);
- (c) The reclamation and drainage of land;
- (d) The general improvement of rural transport (including the making of light railways but not including the construction or improvement of roads);
- (e) The construction and improvement of harbours;
- (f) The construction and improvement of inland navigations;
- (g) The development and improvement of fisheries;

and for any other purpose calculated to promote the economic development of the United Kingdom.

* * * * *

Constitution
of Develop-
ment Com-
missioners.

3.—(1) For the purposes of this Part of this Act it shall be lawful for His Majesty by warrant under the sign manual to appoint five Commissioners, to be styled the Development Commissioners, of whom one to be appointed by His Majesty shall be chairman.

* * * * *

Power to
acquire land
for certain
purposes.

5.—(1) Where an advance is made under this Part of this Act for any purpose which involves the acquisition of land, the Department, body, or persons to whom the advance is made, may acquire and hold land for the purpose, and, where they are unable to acquire by agreement on reasonable terms any land which they consider necessary, they may apply to the Development Commissioners for an order empowering them to acquire the land compulsorily in accordance with the provisions of the Schedule to this Act, and the Commissioners shall have power to make such order.

(2) No land shall be authorised by an order under this section to be acquired compulsorily which, at the date of the order, forms part of any park, garden, or pleasure ground, or forms part of the home farm attached to and usually occupied with a mansion house, or is otherwise required for the amenity or convenience of any dwelling-house, or which at that date is the property of any local authority, or has been acquired by any corporation or company for the purposes of a railway, dock, canal, water, or other public undertaking, or is the site of an ancient monument or other object of archaeological interest.

(3) The Commissioners, in making an order for the compulsory purchase of land, shall have regard to the extent of land held or occupied in the locality by any owner or tenant, and to the convenience of other property belonging to or occupied by the same owner or tenant, and shall, so far as practicable, avoid taking an undue or inconvenient quantity of land from any one owner or tenant, and for that purpose where part only of a holding is taken shall take into

(x) But see 9 & 10 Geo. 5, c. 58, s. 3 (4).

consideration the size and character of the existing agricultural buildings not proposed to be taken which are used in connexion with the holding and the quantity and nature of the land available for occupation therewith, and shall also, so far as practicable, avoid displacing any considerable number of agricultural labourers or others employed on or about the land.

6. For the purposes of this Part of this Act the expression "agriculture and rural industries" includes agriculture, horticulture, dairying, the breeding of horses, cattle, and other live stock and poultry, the cultivation of bees, home and cottage industries, the cultivation and preparation of flax, the cultivation and manufacture of tobacco, and any industries immediately connected with and subservient to any of the said matters.

Definition of
agriculture
and rural
industries.

PART II.

ROAD IMPROVEMENT.

7.—(1) For the purposes of improving the facilities for road traffic in the United Kingdom and of the administration of the road improvement grant provided under any Act passed in the present or any future session of Parliament, there shall be constituted in accordance with regulations made by the Treasury a board, to be called the Road Board, consisting of such number of persons appointed by the Treasury as the Treasury may determine.

Constitution
of Road
Board.

8.—(1) The Road Board shall have power, with the approval of the Treasury—

Powers of
Road Board.

- (a) to make advances to county councils and other highway authorities in respect of the construction of new roads or the improvement of existing roads;
 - (b) to construct and maintain any new roads;
- which appear to the Board to be required for facilitating road traffic.

(5) For the purposes of this Part of this Act the expression "improvement of roads" includes the widening of any road, the cutting off the corners of any road where land is required to be purchased for that purpose, the levelling of roads, the treatment of a road for mitigating the nuisance of dust, and the doing of any other work in respect of roads beyond ordinary repairs essential to placing a road in a proper state of repair; and the expression "roads" includes bridges, viaducts, and subways.

11.—(1) Where the Treasury have approved a proposal by the Road Board to construct a new road under this Part of this Act, the Board may acquire land for the purpose, and may, in addition, acquire land on either side of the proposed road within two hundred and twenty yards from the middle of the proposed road.

Acquisition
of land.

(2) The Road Board may acquire, erect, and furnish such offices and other buildings as they may require, and may acquire land for the purpose.

(3) Where a highway authority are authorised to construct a new road under this Part of this Act, or an advance is made to such an authority in respect of the improvement of an existing road, the authority may acquire land for the purpose of such construction or improvement.

38 & 39 Vict.
c. 55.

(4) For the purpose of the purchase of land by agreement under this Part of this Act by the Road Board or a highway authority the Lands Clauses Acts shall be incorporated with this Part of this Act, except the provisions of those Acts with respect to the purchase and taking of land otherwise than by agreement, and section one hundred and seventy-eight of the Public Health Act, 1875, shall apply as if the Road Board and the highway authority were referred to therein.

(5) Where the Road Board or any highway authority are unable to acquire by agreement on reasonable terms any land which they consider necessary, they may apply to the Development Commissioners for an order empowering them to acquire the land compulsorily in accordance with the provisions of the Schedule to this Act, and the Commissioners shall have power to make such an order: Provided that the provisions of Part I. of this Act, prohibiting the compulsory acquisition of the classes of land mentioned in subsection (3) of section five of this Act shall apply to the acquisition by the Road Board of land on either side of a road proposed to be constructed by the Board.

(6) The Road Board shall have full power, with the approval of the Treasury, to sell, lease, and manage any land acquired by them under this Part of this Act, and not required for the new road, and any receipts derived from any such land, so far as they are applied for the purposes of the construction of new roads, shall not be treated as part of the expenditure of the Road Board on new roads for the purpose of the provisions of this Act limiting the amount of expenditure of the Road Board on new roads.

* * * * *

Application
to London.

15. For the purposes of this Part of this Act the expression "highway authority" includes, as respects the administrative county of London, the London County Council.

* * * * *

PART III.

GENERAL.

* * * * *

Provisions as
to commons
and open
spaces.

19.—(1) Where an order made by the Development Commissioners under Part I. or Part II. of this Act authorises the acquisition of any land forming part of any common, open space, or allotment, the order, so far as it relates to the acquisition of such land, shall be provisional only, and shall not have effect unless and until it is confirmed by Parliament, except where the order provides for giving in exchange for such land other land, not being less in area, certified by the Board of Agriculture and Fisheries to be equally advantageous

to the persons, if any, entitled to commonable or other rights, and to the public:

Provided that—

- (a) This provision shall not apply to the acquisition of any common land for the purpose of forestry, if the order provides for the granting to the public of reasonable access to the land for air, exercise, or recreation unless the land has been dedicated to the public use and enjoyment or is a metropolitan common within the terms of the Metropolitan Commons Act, 1866, or is a suburban common as defined by the Commons Act, 1876, or is subject to a scheme of regulation made in pursuance of the Metropolitan Commons Acts, 1866 to 1898, or the Inclosure Acts, 1845 to 1899, or to a private or local Act of Parliament; and 29 & 30 Vict.
c. 122.
39 & 40 Vict.
c. 56.
- (b) This provision shall not apply to the acquisition of any common land for the purpose of the construction of a new road or the improvement of an existing road within a rural district; and
- (c) Nothing in this Act shall authorise the acquisition of land on either side of a new road to be constructed by the Road Board where the land forms part of a common, open space, or allotment.

(2) Before giving any such certificate of equality of exchange, the Board of Agriculture and Fisheries shall give public notice of the proposed exchange, and shall afford opportunities to all persons interested to make representations and objections in relation thereto, and shall, if necessary, hold a local inquiry on the subject.

(3) Where any order of the Development Commissioners authorises such an exchange, the order shall provide for vesting the land given in exchange in the persons in whom the common, open space, or allotment was vested, subject to the same rights, trusts, and incidents as attached to the common, open space, or allotment, and for discharging the part of the common, open space, or allotment acquired from all rights, trusts, and incidents to which it was previously subject.

(4) For the purposes of this Act the expression "common" shall include any land subject to be enclosed under the Inclosure Acts, 1845 to 1882, and any town or village green; the expression "open space" means any land laid out as a public garden or used for the purposes of public recreation and any disused burial ground; and the expression "allotment" means any allotment set out as a fuel allotment or a field garden allotment under an Inclosure Act.

* * * * *

SCHEDULE.

Ss. 5 and 11.

(1) Where a Government Department, body, or persons to whom an advance is made under Part I. of this Act, or the Road Board or a highway authority (in this Schedule referred to as "the undertakers") propose to purchase land compulsorily under this Act, the

undertakers may submit to the Development Commissioners a draft order putting in force, as respects the lands specified in the order, the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.

(2) The order shall be in the prescribed form and shall contain such provisions as the Development Commissioners may prescribe for the purpose of carrying the order into effect, and shall incorporate the Lands Clauses Acts and sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, or, in Scotland, sections seventy to seventy-eight of the Railways Clauses Consolidation (Scotland) Act, 1845, and those Acts shall apply accordingly, subject to the following modifications:—

- (a) Any question of disputed compensation shall be determined by a single arbitrator, who shall be appointed, and whose remuneration shall be fixed, as respects England, by the Lord Chief Justice of England, as respects Scotland by the Lord President of the Court of Session, and as respects Ireland by the Lord Chief Justice of Ireland, and the arbitrator so appointed shall be deemed to be an arbitrator within the meaning of those Acts;
- (b) An arbitrator so appointed may, notwithstanding anything in the Lands Clauses Acts, determine the amount of costs, and shall have power to disallow, as costs of the arbitration, the costs of any witness whom he considers to have been called unnecessarily, and any other costs which he considers have been caused or incurred unnecessarily;
- (c) In determining the amount of any disputed compensation under any such order, no additional allowance shall be made on account of the purchase being compulsory, and the arbitrator shall have regard to the extent to which the remaining and contiguous lands and hereditaments belonging to the same proprietor may be benefited by the proposed work or road for which the land is authorised to be acquired by the undertakers;
- (d) The provisions of the Lands Clauses Acts as to the sale of superfluous land shall not apply.

(3) The draft order shall be published by the undertakers in the prescribed manner, and such notice shall be given both in the locality in which the land is proposed to be acquired and to the owners, lessees, and occupiers of that land as may be prescribed, and in the case of land forming part of a common, open space, or allotment, also to the Board of Agriculture and Fisheries.

(4) An order authorising the acquisition of any buildings may, if a portion only of those buildings are required for the purposes of the undertakers, notwithstanding anything in the Lands Clauses Acts, require the owners of and other persons interested in those buildings to sell and convey to the undertakers the portions only of the buildings so required, if the arbitrator is of opinion that such portions can be severed from the remainder of the properties without material detriment thereto, and, in such case, the undertakers shall not be obliged

8 & 9 Vict.
c. 20.

8 & 9 Vict.
c. 33.

to purchase the whole or any greater portion thereof, and shall pay for the portions acquired by them and make compensation for any damage sustained by the owners thereof or other parties interested therein by severance or otherwise.

(5) An order may provide for the continuance of any existing easement or the creation of any new easement over the land authorised to be acquired.

(6) Where the land is glebe land or other land belonging to an ecclesiastical benefice, the order shall provide that sums agreed upon or awarded for the purchase of the land or to be paid by way of compensation for the damage to be sustained by the owner by reason of severance or other injury affecting the land, shall not be paid as directed by the Lands Clauses Acts, but shall be paid to the Ecclesiastical Commissioners to be applied by them as money paid to them upon a sale under the provisions of the Ecclesiastical Leasing Acts of land belonging to a benefice.

The provisions of this paragraph shall not apply to Scotland or Ireland.

(7) In construing, for the purposes of this schedule or any order made thereunder, any enactment incorporated with the order, this Act together with the order shall be deemed to be the special Act and the undertakers shall be deemed to be the promoters of the undertaking, and the expression "land" shall include easements, in or relating to land.

(8) In this Schedule the expression "prescribed" means prescribed by the Development Commissioners, and in Scotland the expression "easements" means servitudes.

THE FORESTRY ACT, 1919.

9 & 10 GEO. 5, c. 58.

1.—(1) For the purposes of this Act, it shall be lawful for His Majesty by warrant under the sign manual to appoint eight commissioners, to be styled the Forestry Commissioners, of whom one, to be appointed by His Majesty, shall be chairman, and of whom not less than two shall have special knowledge and experience of forestry in Scotland, and one at least shall be a person having scientific attainments and a technical knowledge of forestry.

Establish-
ment of
Forestry
Commission.

* * * * *

3.—(3) Subject to any directions which may be given by the Treasury, the Commissioners shall have power to do any of the following things:—

(a) Purchase or take on lease and hold any land suitable for afforestation or required for purposes in connexion with afforestation or with the management of any woods or forests, and manage, plant, and otherwise utilize any land acquired, and erect such buildings or execute such other works thereon as they think necessary:

- (b) Sell or let any land which in their opinion is not needed or has proved unsuitable for the purpose for which it was acquired, or exchange any such land for other land more suitable for that purpose, and pay or receive money for equality of exchange:
- (c) Purchase or otherwise acquire standing timber, and sell or otherwise dispose of any timber belonging to them, or, subject to such terms as may be mutually agreed, to a private owner, and generally promote the supply, sale, utilisation, and conversion of timber:

* * * * *

Provided also that, before acquiring any land under this Act and before selling or otherwise disposing of any land so acquired, but not required by them for the purposes of this Act, the Commissioners shall consult the appropriate agricultural department, and, in the case of land proposed to be sold or disposed of, shall give that department an opportunity of acquiring the same.

The appropriate agricultural department shall be in England and Wales the Board of Agriculture and Fisheries, in Scotland the Board of Agriculture for Scotland, and in Ireland the Department of Agriculture and Technical Instruction for Ireland.

* * * * *

(5) It shall be lawful for any of the persons under a disability referred to in section seven of the Lands Clauses (Consolidation) Act, 1845, or of the Lands Clauses (Consolidation) (Scotland) Act, 1845, to enter into agreements with the Commissioners for the purposes of this section in like manner in all respects as they are entitled to enter into agreements for the purposes of those sections.

* * * * *

8 & 9 Vict.
c. 18.
8 & 9 Vict.
c. 19.

**Compulsory
acquisition
of land.**

7.—(1) If the Commissioners are unable to acquire by agreement and on reasonable terms any land which they consider it necessary to acquire for the purpose of this Act, they may apply to the Development Commissioners for an order empowering them to acquire the land compulsorily in accordance with the provisions of the Schedule to this Act, and the Development Commissioners, after giving the owner of such land an opportunity of being heard against such compulsory purchase, shall have power to make such order.

(2) No land shall be authorised by an order under this section to be acquired compulsorily which, at the date of the order, forms part of any park, demesne, garden, or pleasure ground, or forms part of the home farm attached to and usually occupied with a mansion house, or is otherwise required for the amenity or convenience of any dwelling-house, or which at that date is the property of any local authority, or has been acquired by any corporation or company for the purposes of a railway, dock, canal, water, or other public undertaking, or is the site of an ancient monument or other object of archaeological interest.

(3) Where an order made by the Development Commissioners under this Act authorises the acquisition of any land forming part

of any common, open space, or allotment, the order, so far as it relates to the acquisition of such land, shall be provisional only, and shall not have effect unless and until it is confirmed by Parliament, except where the order provides for giving in exchange for such land other land, not being less in area, certified by the Board of Agriculture and Fisheries to be equally advantageous to the persons, if any, entitled to commonable or other rights, and to the public:

Provided that the foregoing provision shall not apply if the order provides for the granting to the public of reasonable access to the land for air, exercise or recreation, unless the land to be acquired has been dedicated to the public use and enjoyment, or is a metropolitan common within the terms of the Metropolitan Commons Act, 1866, or is a suburban common as defined by the Commons Act, 1876, or is subject to a scheme of regulation made in pursuance of the Metropolitan Commons Acts, 1866 to 1898, or the Inclosure Acts, 1845 to 1882, or the Commons Act, 1899, or to a private or local Act of Parliament.

29 & 30 Vict.
c. 122.

39 & 40 Vict.
c. 56.

8 & 9 Vict.
c. 118.

62 & 63 Vict.
c. 30.

(4) Where the Commissioners are of opinion that insufficient facilities exist for the haulage of timber from any wood or forest to a road, railway, or waterway, they may make an order that the owner and occupier of any land shall afford the necessary facilities, subject to payment by the person in whose favour the order is made of reasonable rent or wayleave and of compensation for any damage caused by such haulage, and the owner or occupier of such land shall thereupon afford such facilities; and the amount of rent or wayleave and compensation shall, in default of agreement, be assessed by a single arbitrator appointed by the President of the Surveyors' Institution:

Provided that the Commissioners shall not make any order under this subsection until the person proposed to be required to give such facilities as aforesaid has had an opportunity of being heard and any person aggrieved by an order made under this subsection may appeal therefrom to the Development Commissioners in such manner and upon such conditions, if any, as may be prescribed by them, and the Development Commissioners may thereupon revoke or vary any such order.

* * * * *

9. Any officer of the Commissioners or any other person authorised by them in that behalf, may on production, if so required, of his authority, enter on and survey any land for the purpose of ascertaining whether it is suitable for afforestation or for the purpose of inspecting any timber thereon, or for any other purpose in connexion with the exercise of the powers and performance of the duties of the Commissioners under this Act.

Power of
entry to
inspect
land, &c.

* * * * *

SCHEDULE.

S. 7.

(1) Where the Commissioners propose to purchase land compulsorily under this Act, they may submit to the Development Commissioners a draft order putting in force, as respects the land specified

in the order, the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.

(2) The order shall be in the prescribed form and shall contain such provisions as the Development Commissioners may prescribe for the purpose of carrying the order into effect, and shall incorporate the Lands Clauses Acts, except such of those provisions as relate to the sale of superfluous land, and sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845, or, in Scotland, sections seventy to seventy-eight of the Railways Clauses Consolidation (Scotland) Act, 1845, and those Acts shall apply accordingly.

(3) The draft order shall be published by the Commissioners in the prescribed manner, and such notice shall be given both in the locality in which the land proposed to be acquired is situate and to the owners, lessees, and occupiers of that land as may be prescribed, and in the case of land forming part of a common, open space, or allotment, also to the Board of Agriculture and Fisheries.

(4) An order authorising the acquisition of any buildings may, if portions only of those buildings are required for the purposes of the Commissioners, notwithstanding anything in the Lands Clauses Acts, require the owners of and other persons interested in those buildings to sell and convey to the Commissioners the portions only of the buildings so required, if the arbitrator is of opinion that such portions can be severed from the remainder of the properties without material detriment thereto, and, in such case, the Commissioners shall not be obliged to purchase the whole or any greater portion thereof, and shall pay for the portions acquired by them and make compensation for any damage sustained by the owners thereof or other parties interested therein by severance or otherwise.

(5) An order may provide for the continuance of any existing easement or the creation of any new easement over the land authorised to be acquired.

(6) Where the land is glebe land or other land belonging to an ecclesiastical benefice, the order shall provide that sums agreed upon or awarded for the purchase of the land or to be paid by way of compensation for the damage to be sustained by the owner by reason of severance or other injury affecting the land, shall not be paid as directed by the Lands Clauses Acts, but shall be paid to the Ecclesiastical Commissioners to be applied by them as money paid to them upon a sale under the provisions of the Ecclesiastical Leasing Acts of land belonging to a benefice.

The provisions of this paragraph shall not apply to Scotland or Ireland.

(7) In construing, for the purposes of this Schedule or any order made thereunder, any enactment incorporated with the order, this Act together with the order shall be deemed to be the special Act and the Commissioners shall be deemed to be the promoters of the undertaking, and the expression "land" shall include easements, in or relating to land.

(8) In this Schedule the expression "prescribed" means prescribed by the Development Commissioners, and in Scotland the expression "easements" means servitudes.

8 & 9 Vict.
c. 20.

8 & 9 Vict.
c. 33.

THE LAND SETTLEMENT (FACILITIES) ACT, 1919.

9 & 10 GEO. 5, c. 59.

PART I.

PROVISIONS AS TO THE ACQUISITION OF LAND.

1.—(1) Any order for the compulsory acquisition of land which is duly made after the date of the passing of this Act and before the expiration of three years from that date by a council under the Small Holdings and Allotments Act, 1908 (hereinafter referred to as the principal Act), need not, except as otherwise expressly provided by this Act, be submitted to or confirmed by the Board of Agriculture and Fisheries, but shall have effect as if it had been so confirmed:

Temporary suspension of requirements as to confirmation of orders for the acquisition of land.

8 Edw. 7, c. 36.

Provided that a grant or inclosure of common purporting to be made under any such order shall not be valid unless it is made with the consent of the Board, given under and in accordance with the provisions of section twenty-two of the Commons Act, 1899.

62 & 63 Vict. c. 30.

(2) Notice of the making of an order to which this section applies shall be given in the prescribed form and manner by the council as soon as practicable to each owner, lessee and occupier of the land authorised to be acquired, and a copy of the order and of any plan annexed or referred to in the order shall be furnished by the council to any person interested in the land, on application by such person.

2.—(1) Where an order for the compulsory purchase of land has been made, and where necessary confirmed, under the principal Act, whether such order was made before or after the passing of this Act, the council entitled to purchase the land under the order may, at any time after a notice to treat has been served, and on giving not less than fourteen days' notice to each owner, lessee and occupier of the land, enter on and take possession of the land or such part thereof as is specified in the notice without previous consent or compliance with sections eighty-four to ninety of the Lands Clauses (Consolidation) Act, 1845, but subject to the payment of the like compensation for the land of which possession is taken and interest thereon as would have been payable if the provisions of those sections had been complied with:

Power of entry on land.

8 & 9 Vict. c. 18.

Provided that, where a council have so entered on land, the council shall not be entitled to exercise the powers conferred by subsection (8) of section thirty-nine of the principal Act.

(2) Where a council have agreed, for the purposes of the principal Act, to purchase land subject to the interest of the person in possession thereof, and that interest is not greater than that of a tenant for a year, or from year to year, then at any time after such agreement has been made the council may, after giving not less than fourteen days' notice to the person so in possession, enter on and take possession of the land or of such part thereof as is specified in the notice without previous consent, but subject to the payment to the person so in possession of the like compensation for the land of which possession is taken, with such interest thereon as aforesaid, as if

the council had been authorised to purchase the land compulsorily and such person had, in pursuance of such power, been required to quit possession before the expiration of his term or interest in the land, but without the necessity of compliance with sections eighty-four to ninety of the Lands Clauses (Consolidation) Act, 1845.

(3) Where a notice of entry under this section relates to land on which there is a dwelling-house and the length of notice is less than three calendar months, the occupier of the dwelling-house may, by notice served on the council within ten days after the service on him of the notice of entry, appeal against such notice, and in any such case the appeal shall be determined by an arbitrator under and in accordance with the provisions of the Second Schedule of the Agricultural Holdings Act, 1908 (except that the arbitrator shall, in default of agreement, be appointed by the President of the Surveyors' Institution), and the council shall not be entitled to enter on the land under this section except on such date and on such conditions as the arbitrator may award.

(4) This section shall with such necessary adaptations as may be prescribed apply in the case of an order authorising the compulsory hiring of land, or of an agreement to hire land.

Power of
Board of
Agriculture
and Fish-
eries to
provide
land for
settlement.

3 (y).—(1) If the Board of Agriculture and Fisheries are satisfied that in any county the council are not providing small holdings, or land to be leased to a parish council for the provision of allotments, to such extent as in the opinion of the Board is desirable, the Board shall, in that county, during a period of three years after the passing of this Act, acquire land to such extent as they think desirable for small holdings or to be leased to a parish council for the provision of allotments, and, for such purpose and for the use or disposal of the land when acquired, the Board shall have the same powers as may be exercised by a county council under the principal Act, and the provisions of the principal Act relating to the acquisition use or disposal of land by a county council and to small holdings provided by a county council shall apply with the necessary adaptations to the acquisition, use and disposal of land by the Board and to small holdings provided by the Board under this section.

(2) Where the Board determine to exercise in any county the powers conferred by this section, they shall give notice of such determination to the council of the county.

(3) A county council shall furnish the Board with all such information as the Board may require for the purposes of this section.

(4) The Board may at any time transfer land acquired under this section to the council of the county in which it is situate if the Board are satisfied that the council are willing to exercise and perform their powers and duties in relation thereto, but the terms of any transfer shall be subject to the approval of the Treasury.

(5) The expenses of the Board under this section to such extent as may be sanctioned by the Treasury shall be defrayed out of the Small Holdings Account, and the receipts of the Board under this section shall be paid into that account.

(y) Continued in force by the Expiring Laws Continuance Act, 1921 (11 & 12 Geo. 5, c. 53).

4.(z)—(1) During a period of two years after the passing of this Act the Board of Agriculture and Fisheries may, with the consent of the Treasury, purchase or hire land for reclamation or drainage, and for such purpose shall have the same powers as may be exercised by a county council under the principal Act, for the acquisition of land for small holdings or allotments, and the provisions of the principal Act relating to such acquisition shall apply with the necessary adaptations.

Power of Board of Agriculture and Fisheries to acquire land for reclamation, &c.

(2) The powers of management conferred on the Board by section four of the Small Holding Colonies Act, 1916, shall apply with the necessary modifications in relation to land acquired by the Board under this section or any other enactment.

6 & 7 Geo. 5, c. 38.

5.(z)—(1) Subject to the limitations contained in the Small Holding Colonies Acts, 1916 and 1918, on the amount of land which may be acquired for the purposes of those Acts, and to the provisions of section one of the Small Holdings Colonies (Amendment) Act, 1918, as to consultation with the chairman or a committee of the council of the county in which the land proposed to be acquired is situate, land may, during the period of two years after the passing of this Act, be acquired by the Board of Agriculture and Fisheries compulsorily for the purposes of those Acts in like manner, and subject to the like provisions as for the purposes mentioned in the last foregoing section, and that section shall apply accordingly, and the powers of acquiring land by agreement under those Acts shall be exercisable during the like period.

Power of acquiring land for small holding colonies.

8 & 9 Geo. 5, c. 26.

* * * * *

8. For the purpose of a sale of land under the Ecclesiastical Leasing Acts to a council or to the Board of Agriculture and Fisheries for the purposes of the principal Act or the Small Holding Colonies Acts, 1916 and 1918, the consent of the patron to the sale shall not be necessary.

Sales of glebe.

PART II.

AMENDMENT OF THE SMALL HOLDINGS AND ALLOTMENTS ACT, 1908.

* * * * *

10.—(1) The power of a council to acquire land for small holdings under the principal Act shall not be exercised during the period ending on the thirty-first day of March, nineteen hundred and twenty-six, except with the previous consent of the Board of Agriculture and Fisheries, or after the thirty-first day of March, nineteen hundred and twenty-six, except at such a price or rent or for such an annuity as in the opinion of the council will allow all expenses incurred by the council in relation to the land to be recouped out of the purchase money or rent to be obtained by the council for the land.

Amendment of principal Act as respects power to acquire land for small holdings.

* * * * *

12.—(1) Subject to the consent of the Board of Agriculture and Fisheries in cases where their consent is required under this section

Extension of powers of councils in

(c) Continued in force by the Expiring Laws Continuance Act, 1921 (11 & 12 Geo. 5, c. 53).

relation
to land ac-
quired under
principal Act.

or under regulations made by the Board, a county council shall have power in any case where in the opinion of the council it is necessary or expedient so to do for the better carrying into effect of the principal Act—

* * * * *

(b) to sell, mortgage, exchange, or let any such land or any interest therein, subject, in the case of any sale, mortgage, or exchange, to the consent of the Board, and in the case of a mortgage subject also to the consent of the Local Government Board:

(c) in a case where no power of appropriation is otherwise provided, with the consent of the Board and the Local Government Board and subject to such conditions as to the repayment of any loan made for the purpose of the acquisition of the land or otherwise as the last-mentioned Board may impose—

(i) to appropriate for any purpose for which the council is authorised to acquire land under the principal Act any land held by the council for other purposes of the council; or

(ii) to appropriate for other purposes of the council land acquired by the council under the principal Act:

* * * * *

8 & 9 Vict.
c. 18.

(3) The provisions of the Lands Clauses (Consolidation) Act, 1845, with respect to the sale of superfluous land, shall not apply to land acquired by a council under the principal Act.

Removal of
necessity for
consent of
Board after
a certain
period.

13. Notwithstanding any provision in the principal Act, the consent of the Board of Agriculture and Fisheries shall not, after the thirty-first day of March, nineteen hundred and twenty-six, be required for the acquisition, sale, mortgage, exchange, letting, improvement, or management of land by a county council under the principal Act, except in cases where such consent is required by some enactment other than the principal Act.

* * * * *

Amendment
of s. 41 of
principal Act.

16.—(1) An order under the principal Act may, notwithstanding anything in section forty-one thereof, authorise the compulsory acquisition—

(a) of any land which at the date of the order forms part of any park or of any home farm attached to and usually occupied with a mansion house, if the land is not required for the amenity or convenience of the mansion house; or

(b) of a holding of fifty acres or less in extent or any part of such a holding.

(2) Where it is proposed to acquire any land forming part of a park or any such home farm, or, except where required for purposes of allotments, a holding of fifty acres or less in extent or of an annual value not exceeding fifty pounds for the purposes of income tax, or any part of such a holding, the order authorising the acquisition of the land shall not be valid unless confirmed or made by the Board of Agriculture and Fisheries.

(3) A holding to which the preceding subsection applies shall not in whole or in part be compulsorily acquired under the principal

Act by the Board or a council where it is shown to the satisfaction of the Board or the council, as the case may be, that the holding is the principal means of livelihood of the occupier thereof, except where the occupier is a tenant and consents to the acquisition.

17. A county council may acquire land for the purpose of leasing it to the council of a parish within the county for the provision of allotments, and the provisions of the principal Act relating to the acquisition, and to proceedings in relation to the acquisition, of land for the purpose of providing small holdings shall apply to such acquisition as if the land were to be acquired for the provision of small holdings.

Power of county council to acquire land for letting to parish council for allotments.

* * * * *

19. A council, with a view to ascertaining whether any land is suitable for any purpose for which the council has power to acquire land under the principal Act, may by writing in that behalf authorise any person (upon production, if so required, of his authority), to enter and inspect the land specified in the authority, and anyone who obstructs or impedes any person acting under and in accordance with any such authority shall be liable on summary conviction to a fine not exceeding twenty pounds.

Power of entry to inspect land.

* * * * *

22.—(1) A council of a borough, urban district, or parish may, in a case where no power of appropriation is otherwise provided, with the consent of the Board of Agriculture and Fisheries and the Local Government Board, and subject to such conditions as to the repayment of any loan obtained for the purpose of the acquisition of land or otherwise as the last-mentioned Board may impose,—

Power of appropriation of land.

- (a) appropriate for the purpose of allotments any land held by the council for other purposes of the council; or
- (b) appropriate for other purposes of the council land acquired by the council for allotments.

(2) This section shall apply, in the county of London, to the council of the county and to any metropolitan borough council.

23. Where land is let for the provision of allotments either to a council under the principal Act or to an association formed for the purpose of creating or promoting the creation of allotments, the right of the council or association to claim compensation from the landlord on the determination of the tenancy shall be subject to the terms of the contract of tenancy, notwithstanding the provision of any Act to the contrary:

Agreements as to compensation where land is let for provision of allotments.

Provided that this section shall not prejudice or affect any right on the part of a person holding under a tenancy granted by the council or association to claim compensation from the council or association on the determination of his tenancy.

24. The powers as to allotments conferred on borough councils by the principal Act may be exercised by a metropolitan borough council, and the expenses so incurred by a council shall be defrayed, and money for such purpose may be borrowed, under and in accord-

Power of metropolitan boroughs as to allotments.

54 & 55 Vict. c. 76. **ance** with the provisions of the Public Health (London) Act, 1891,
as if such expenses were incurred by the council under that Act.

* * * * *

PART IV.

GENERAL.

Provisions as
to commons
and open
spaces.
29 & 30 Vict.
c. 122.

28.—(1) Any land which is, or forms part of, a metropolitan common within the meaning of the Metropolitan Commons Act, 1866, or which is subject to regulation under an order or scheme made in pursuance of the Inclosure Acts, 1845 to 1899, or under any local Act or otherwise, or which is or forms part of any town or village green, or of any area dedicated or appropriated as a public park, garden, or pleasure ground, or for use for the purposes of public recreation, shall not be appropriated under this Act by a council for small holdings or allotments, and shall not be acquired by a council or by the Board of Agriculture and Fisheries under the principal Act except under the authority of an order for compulsory purchase made under the principal Act, which so far as it relates to such land shall be provisional only, and shall not have effect unless it is confirmed by Parliament.

39 & 40 Vict.
c. 56.

(2) The Board of Agriculture and Fisheries, in giving or withholding their consent under this Act to the appropriation and in confirming an order for compulsory acquisition by a council for the purpose of small holdings or allotments of any land which forms part of any common, and in the exercise by the Board of their powers of acquiring land under this Act, shall have regard to the same considerations and shall hold the same inquiries as are directed by the Commons Act, 1876, to be taken into consideration and held by the Board before forming an opinion whether an application under the Inclosure Acts shall be acceded to or not. Any consent by the Board of Agriculture and Fisheries for the appropriation of land forming part of any common for the purpose of small holdings or allotments shall be laid before Parliament while Parliament is sitting, and, if within twenty-one days in either House of Parliament a motion is carried dissenting from such appropriation, the order of the Board shall be cancelled.

(3) Where an order for compulsory purchase to which this section applies or a consent by the Board to the appropriation of land provides for giving other land in exchange for the common or open space to be purchased or appropriated, the order for compulsory purchase or an order made by the Board in relation to the consent for appropriation may vest the land given in exchange in the persons in whom the common or open space purchased or appropriated was vested subject to the same rights, trusts, and incidents as attached to the common or open space and discharges the land purchased or appropriated from all rights, trusts, and incidents to which it was previously subject.

(4) Nothing in the principal Act shall be deemed to authorise the acquisition of any land which forms part of the trust property to which the National Trust Act, 1907, applies.

7 Edw. 7,
c. cxxxvi.
Local and
private.

29. The powers conferred upon a tenant for life by the Settled Land Acts, 1882 to 1890, shall include the following further power:—

Amendment
of Settled
Land Acts,
1882 to 1890.

A power at any time, or times, to make a grant or grants of any part or parts of the settled land in fee simple or absolutely, or a lease or leases for any term of years without any consideration, or at a nominal price, annuity or rent, or at less than the best price, annuity or rent that can reasonably be obtained for the purpose of the Small Holdings and Allotments Acts, 1908 to 1919, and any such grant as aforesaid shall be deemed to be a sale within the meaning of the said Settled Land Acts: Provided that, except under an order of the court, no more than two acres in the case of land situate in an urban district or ten acres in the case of land situate in a rural district in any one parish shall be granted or leased under this power for the purpose of the said Small Holdings and Allotments Acts or under the similar power conferred by the Housing, Town Planning, &c. Act, 1919, for the purpose of the erection of dwellings for the working classes or the provision of gardens to be held in connexion therewith or for all of such purposes together without payment of the full-price annuity or rent for any land granted or leased in excess of such quantity.

9 & 10 Geo. 5,
c. 35.

* * * * *

32.—(1) This Act, so far as it amends the principal Act, shall be construed as one with that Act, and references in this Act to the principal Act, or to any provision of the principal Act, shall, where the context permits, be construed as references to the principal Act, or the provisions of the principal Act as amended by this Act.

Construction.

(2) References to small holdings provided, and to land acquired, under the principal Act shall be construed as including references to small holdings provided and land acquired under any enactment repealed by the principal Act.

* * * * *



THE SMALL HOLDING COLONIES ACT, 1916 (*y*).

6 & 7 GEO. 5, c. 38.

* * * * *

1.—(1) The Board of Agriculture and Fisheries (in this Act referred to as "the Board") for the purpose of providing experimental small holding colonies may, with the consent of the Treasury, acquire by agreement any land which, in the opinion of the Board, is suitable for that purpose.

Power of
Board to
acquire land
for small
holding
colonies.

(2) Where the Board, or a landlord at the request of the Board, terminates a tenancy of land by notice to quit, whether given before or after the passing of this Act, with a view to the use of the land or

(*y*) This Act, which was temporary, was made perpetual by 9 & 10 Geo. 5, c. 59, Sched. 3.

any part thereof by the Board for the provision of small holdings under this Act, the tenant upon quitting shall be entitled to recover from the Board compensation for the loss or expense directly attributable to the quitting which the tenant may unavoidably incur upon or in connection with the sale or removal of his household goods or his implements of husbandry, produce, or farm stock on or used in connection with the land:

Provided that no compensation shall be payable under this subsection:

(a) unless the tenant has given to the Board a reasonable opportunity of making a valuation of such goods, implements, produce, and stock as aforesaid; or

(b) if the claim for compensation is not made within three months after the time at which the tenant quits;

and in the event of any difference arising as to any matter under this subsection the difference shall, in default of agreement, be settled by a single arbitrator in accordance with the Agricultural Holdings Act, 1908:

8 Edw. 7,
c. 28.

4 & 5 Geo. 5,
c. 7.

Provided also that compensation under the Agricultural Holdings Act, 1914, shall not be payable in any case to which this subsection applies.

(3) The total area of the land for the time being acquired by the Board for the purposes of this section shall not at any time exceed *forty-five thousand (z)* acres in England (excluding Monmouthshire), or *twenty thousand (z)* in Wales and Monmouthshire, or *sixty thousand (z)* in all, and in the selection of persons to be settled on the land so acquired the Board shall give preference to persons who have served in the naval or military forces of the Crown in the present war.

(4) For the purpose of the acquisition of land by agreement under this Act, the Lands Clauses Acts shall be incorporated with this Act except the provisions of those Acts with respect to the purchase and taking of land otherwise than by agreement and the provisions relating to the sale of superfluous land and the provisions with respect to any lands being common or waste land.

(5) Where a labourer, who has been regularly employed on any land acquired by the Board for the purposes of this Act, proves to the satisfaction of the Board that the effect of the acquisition was to deprive him of his employment, and that there was no employment of an equally beneficial character available to him in the same locality, the Board shall pay to him such compensation as they think just for his loss of employment or for his expenses in moving to another locality, and any sum so paid shall be treated as part of the expenses of the acquisition of the land.

2. With the consent of, and subject to regulations made by, the Treasury, the Board may promote the formation or extension of societies on a co-operative or co-partnership basis, having for their object, or one of their objects, the establishment or profitable working of holdings provided under this Act, whether in relation to the

Power of
Board to
promote co-
operation in
connection
with small
holdings
colonies.

(z) 8 & 9 Geo. 5, c. 26.

purchase of requisites, the sale of produce, credit banking, or insurance, or otherwise, and may assist any such society by making grants or advances to the society, or guaranteeing advances made to the society, upon such terms and conditions as to rate of interest and repayment or otherwise, and on such security, as the Board think fit, and the Board where they think fit may transfer to any such society the whole or any portion of any colony of small holdings provided under this Act upon such terms and conditions as the Board may think fit:

Provided that the Board shall not make any such transference except upon such terms as provide for the payment of the full value of the land transferred, as determined by the Board with the consent of the Treasury.

3. The power of acquiring land conferred on the Board by this Act or the Development and Road Improvement Funds Act, 1909, shall include power by agreement to take land on lease or acquire an option of purchasing land or taking land on lease.

Powers in relation to acquisition of land.

* * * * *

7.—(1) Any person having power (whether subject to any consent or conditions or not) to sell land authorised to be acquired by the Board may, subject to the like consent and conditions, grant or demise the land in perpetuity or for any term of years to the Board at such fee farm or other rent, secured by such condition of re-entry or otherwise as may be agreed upon, and with or without a right of renewal, or grant to the Board an option to acquire the land:

Power to grant or demise land to Board for perpetual rent.

Provided that, where the power to sell arises under the Settled Land Acts, 1882 to 1890, the powers conferred by this section shall be exercised only with the consent of the trustees of the settlement for the purposes of those Acts, or with the sanction of the court.

(2) This section shall extend and apply to land belonging to His Majesty in right of the Crown or of the Duchy of Lancaster, and to land belonging to the Duchy of Cornwall.

8.—(1) For the purposes of this Act and the Lands Clauses Acts as incorporated with this Act the expression "land" includes any right or easement in or over land, and the expression "small holding" has the same meaning as in the Small Holdings and Allotments Act, 1908.

Interpretation and miscellaneous.

(2) The powers conferred by this Act are in addition to and not in substitution for any powers otherwise exercisable by the Board.

(3) Any person who sells land to the Board or purchases land from the Board or exchanges land with the Board shall not be entitled to require proof of compliance with any conditions prescribed by regulations made by the Treasury, or of the consent of the Treasury, or be affected by any omission to comply with those conditions, or to obtain such consent.

* * * * *



THE COMMONS ACT, 1899.

62 & 63 VICT. c. 30.

* * * * *

6. No estate, interest, or right of a profitable or beneficial nature in, over, or affecting any common shall, except with the consent of the person entitled thereto, be taken away or injuriously affected by any scheme under this Part of this Act without compensation being made or provided for the same by the council making the scheme, and such compensation shall, in case of difference, be ascertained and provided in the same manner as if it were for the compulsory purchase and taking, or the injurious affecting, of lands under the Lands Clauses Acts.

* * * * *

Section VI. (a).—Provision of Public Services by State or Local Authorities.

THE TELEGRAPH ACT, 1878.

41 & 42 VICT. c. 76.

* * * * *

Amendment
of 26 & 27
Vict. c. 112,
as to con-
sents.

3. Where any body or person (within the meaning of the Telegraph Act, 1863,) having power under the said Act to give or withhold their consent to the Postmaster General placing telegraphs and posts (within the meaning of the said Act) in, under, upon, along, over, or across a street or public road, or any estuary or branch of the sea, or the shore or bed of any tidal water, or where any proprietors, lessees, directors, or persons having the control of any railway or canal (within the meaning of the said Act), and having power under the said Act to give or withhold a consent to the Postmaster General placing telegraphs and posts under, in, upon, along, or across such railway or canal, fail within twenty-one days after being required to do so by the Postmaster General to give their consent, or attach to their consent any terms, conditions, or stipulations to which the Postmaster General objects, or withdraw a consent, a difference shall be deemed to have arisen between the Postmaster General and such body or person, proprietors, lessees, directors, or persons (as the case may be), and that difference shall be determined in manner herein-after provided, and the authority by whom the difference is to be determined may, if after hearing all parties concerned they think it just, give their consent either unconditionally or subject to such pecuniary or other terms, conditions, and stipulations as they

(a) See Book II., Chap. VII., *ante*, p. 378. The more important statutes only are set out in the Appendix.

may think just; and that consent shall for all purposes be of the same effect as if it were a consent given under the Telegraph Act, 1863, to the Postmaster General by such body or person, proprietors, lessees, directors, or persons.

4. Where any difference arises under this Act or the Telegraph Act, 1863, between the Postmaster General and any body or person having any power, jurisdiction, or control over or relating to a street or public road, or having power under the last-mentioned Act to give or withhold a consent to the placing of telegraphs and posts in, under, upon, along, or across a street or public road, such difference shall in England or Wales and Ireland be referred to the police or stipendiary magistrate having jurisdiction within the district in which the difference has arisen, or if there be no such magistrate, then to the judge of the county court having jurisdiction within such district, and in Scotland to the sheriff, and such magistrate, judge, and sheriff are respectively empowered and required to hear and determine such difference, and sections thirty to thirty-three, both inclusive, of the Regulation of Railways Act, 1868, shall apply to every difference so referred to such magistrate, judge, or sheriff (as the case may be) in like manner as if he were an arbitrator appointed pursuant to those sections, and as if the Postmaster General, body, or person between whom the difference has arisen were companies within the meaning of those sections.

Differences relating to a street or public road to be determined by stipendiary magistrate, county court judge, or sheriff.

31 & 32 Vict. c. 119.

Provided always, that in case either the Postmaster General or the body or person between whom the difference has arisen shall be dissatisfied with the award or decision of such magistrate, judge, or sheriff, the party so dissatisfied may within twenty-one days after such award or decision require, by a notice in writing given to the other party, that the difference shall be referred to the Railway Commissioners.

5. The differences so required to be referred by the last preceding section to the Railway Commissioners and all other differences under this Act, except a difference between the Postmaster General and any body or person having any right, power, jurisdiction, or control in, over, or relating to any estuary or branch of the sea or the shore or bed of any tidal water, shall be referred to and shall be determined by the Railway Commissioners for the time being; and every difference referred to them under this Act shall be conducted by the Railway Commissioners in the same manner as any other proceeding is conducted by them under the Acts relating to those Commissioners; and it shall be the duty of the Railway Commissioners, and they are hereby empowered, to undertake and determine any difference referred to them under this Act; and any difference between the Postmaster General and any body or person having any right of property or other right, or any power, jurisdiction, or authority in, over, or relating to any estuary, branch of the sea, or the shore or bed of any tidal water shall be referred to and determined by the Board of Trade.

General provisions as to arbitration.

In the event of the Railway Commissioners ceasing to hold office, all differences directed under this Act to be determined by them

31 & 32 Vict.
c. 119.

Power of
Postmaster
General to
establish
telegraphic
lines on
certain un-
dertakings
authorised
by special
Act of Par-
liament.

shall be determined by the Board of Trade, and sections thirty to thirty-three, both inclusive, of the Regulation of Railways Act, 1868, shall apply to every difference to be determined under this Act by the Board of Trade, in like manner as if the Postmaster General, undertakers, body, or person between whom that difference has arisen were companies within the meaning of those sections.

6. Where an Act of Parliament passed after the first day of January one thousand eight hundred and seventy-eight authorises the construction of any of the following undertakings, namely, any railway, canal, tramway other than street tramways, highway, bridge, railway or river embankment, subway, aqueduct over or across a river, dock, harbour, or pier, it shall be lawful for the Postmaster General, by himself or his agents, to place and maintain telegraphic lines in, under, upon, along, over, or across such undertaking, and from time to time to alter the same, and he may from time to time, by himself or his agents, enter upon any land or works of the undertakers for the purpose of placing, maintaining, or altering any telegraphic line in pursuance of this section, or of examining or repairing any line so placed, and may there remain for such reasonable time, and execute and do all such works and things, as may be necessary or convenient for the purposes aforesaid, but shall not interfere with the traffic along or user of the undertaking, subject to the following conditions:

- (1.) In placing, maintaining, or altering such telegraphic lines no obstruction shall be caused to the traffic along or the user of such undertaking:
- (2.) The Postmaster General shall, not less than one month before he places any telegraphic line, give to the undertakers a notice specifying the course and position of the proposed telegraphic lines, and if within one month after such notice the undertakers object to the course or position specified in the notice, and do not agree with the Postmaster General on some other course or position, a difference shall be deemed to have arisen between the Postmaster General and the undertakers:
- (3.) If any damage or injury be caused or any stoppage or delay be occasioned to the works of the undertaking by the placing, repair, or maintenance of such telegraphic lines, the Postmaster General shall at his own expense make good such damage or injury, and shall indemnify the undertakers against any expense to which they may be put by reason of any such damage, injury, stoppage, or delay:
- (4.) If the undertakers shall incur any additional expense by or in consequence of the repair or maintenance of such telegraphic lines, the Postmaster General shall from time to time pay to the undertakers the amount of such additional expense.

This section shall apply to the several railways over which powers were conferred upon the Postmaster General by the Local Acts.

mentioned in the schedule to this Act, and to the undertakers empowered by such Local Acts respectively.

Provided that so far as relates to any railways belonging to or leased or worked by any of the railway companies mentioned in section nine, or in the schedule of the Telegraph Act, 1868, the powers of constructing, altering, or maintaining telegraphic lines by the Postmaster General shall not be exercised if and so long as the said companies respectively are able and willing themselves to construct, alter, and maintain such telegraphic lines, and such construction, maintenance, and repair shall be upon the terms and conditions in the said Act or the agreements thereunder declared: Provided also, that this section shall not affect any agreement between any undertakers and the Postmaster General.

If any difference arises between the Postmaster General and any undertakers in relation to the exercise of any power under this section, that difference shall be determined in manner provided by this Act.

* * * * *

12. A notice under this Act may be in writing or print, or partly in writing and partly in print.

Any notice, appointment, direction, or document given, issued, or made for the purposes of this Act by the Postmaster General shall be sufficiently authenticated if purporting to be signed by a secretary or assistant secretary of the Post Office, or by a superintending engineer of the Postmaster General, or by an officer appointed for the purpose by the Postmaster General, and when so authenticated shall be deemed to be given, issued, or made by the Postmaster General.

Printing, authentication, and service of notices and other documents.

Where a notice is given by any undertakers, body, or person, the notice shall be sufficiently authenticated if purporting to be signed by the chairman, secretary, clerk, or other officer of such undertakers, body, or person.

A notice required to be given under this Act to the Postmaster General may be given by leaving the same at or by forwarding the same by post to the General Post Office in a letter addressed to the Postmaster General or to the Secretary of the Post Office, or to an assistant secretary of the Post Office, or by delivering the same to or forwarding the same by post in a letter addressed to the superintending engineer of the Postmaster General for the district in which is the work, telegraphic line, or other matter referred to in the notice and addressed to him at his office or usual place of abode.

A notice required to be given under this Act to any undertakers or body may be given by leaving the same at or by forwarding the same by post to the office, or where there is more than one office the principal office of such undertakers or body in a letter addressed to such undertakers or body, or to their chairman, secretary, clerk, or other officer.

A notice required to be given under this Act to any person may be given by delivering the same to such person or by leaving the same

at or forwarding the same by post in a letter addressed to such person at his usual or last known place of abode.

Where a notice is forwarded by post it shall be deemed to have been given at the time when the letter containing the same would be delivered in the ordinary course of post, and in proving the giving thereof it shall be sufficient to prove that the same was properly addressed and put into the post.

The expression "notice" in this section shall be deemed to include a counter-notice.

* * * *

THE TELEGRAPH (CONSTRUCTION) ACT, 1908.

8 EDW. 7, c. 33.

* * * *

3. Notwithstanding the provisions of this Act no telegraphic line shall be constructed on, over, along, or across any land dedicated to the recreation of the public, or any hedge or bank adjoining such land, without the consent of the person under whose control and management such land for the time being remains: Provided that if such consent is withheld or any condition is attached thereto to which the Postmaster-General objects, a difference shall be deemed to have arisen between the Postmaster-General and that person, and sections three, four, and five of the Telegraph Act, 1878, shall apply accordingly as if it were a difference arising under that Act.

* * * *

6. Notwithstanding anything in the Railway and Canal Traffic Act, 1888, any difference directed to be determined by the Railway and Canal Commission under the Telegraph Acts, 1863 to 1907, or this Act, may in the discretion of the Commission be heard and determined by the two appointed Commissioners whose order shall be deemed to be the order of the Commission.



THE TELEGRAPH (CONSTRUCTION) ACT, 1916.

6 & 7 GEO. 5, c. 40.

User of land
and buildings
for tele-
graphic lines.

1. If the owner, lessee, or occupier of any land or building refuses or fails to give his consent to the placing of a telegraphic line under, in, upon, over, along or across the land or building within two months after being required to do so by notice from the Postmaster-General, a difference shall be deemed to have arisen between the Postmaster-General and that owner, lessee, or occupier, and sections three, four, and five of the Telegraph Act, 1878, shall apply accordingly as if it were a difference arising under that Act:

Provided that the tribunal to which the difference is referred under these sections shall not give its consent to the placing of the

41 & 42 Vict.
c. 76.

line unless satisfied that such refusal or failure is contrary to the public interest; and in deciding whether to give its consent or to impose any terms, conditions, or stipulations, including the carrying of any portion of the line underground, the tribunal shall, among other considerations, have regard to the effect, if any, on the amenities or value of the land of the placing of the line in the manner proposed:

Provided also that, subject as aforesaid, all the provisions of the Telegraph Act, 1863, shall apply in the case of the exercise of any powers authorised to be exercised under this section, and such owner, lessee, or occupier, shall have and enjoy all the benefits of such provisions. 26 & 27 Vict. c. 112.

2. The proviso to subsection (1) of section four of the Telegraph Act, 1892 (which relates to telegraphic lines constructed irregularly or by persons other than the Postmaster-General), shall extend and apply to a telegraphic line placed under, in, upon, over, along or across any land or building, as well as to a telegraphic line constructed under or along a street or public road. Amendment of s. 4 of 55 & 56 Vict. c. 59.

3. Section three and section six of the Telegraph (Construction) Act, 1908 (which relate to public recreation grounds and the determination of differences), shall apply as if they were herein re-enacted and in terms made applicable to this Act. Application of 8 Edw. 7, c. 33, ss. 3 and 6.

4. Before entering on land or buildings for the purpose of the construction or maintenance of any telegraphic line the Postmaster-General shall, except in case of emergency, endeavour to make an arrangement with the occupier of the land as to the times of entry for such purpose, and if any difference arises between the Postmaster-General and the occupier it shall be determined in manner aforesaid. Restriction on power of entry for construction and maintenance.

5.—(1) In this Act any expressions to which a special meaning is attached under the Telegraph Acts, 1863 to 1915, or any of them, shall have the same respective meanings in this Act. Interpretation, notices, repeal, extent, and short title.

(2) Section twelve of the Telegraph Act, 1878 (which relates to the printing, authentication and service of notices and other documents), shall apply, for the purposes of this Act, as it applies for the purposes of that Act.

(3) The enactments mentioned in the Schedule to this Act are hereby repealed to the extent specified in the third column of that Schedule.

(4) This Act and the Telegraph (Construction) Act, 1908, shall extend to the Isle of Man as if they were Telegraph Acts to which the Telegraph (Isle of Man) Act, 1889, applies.

(5) This Act may be cited as the Telegraph (Construction) Act, 1916, and may be cited with the Telegraph Acts, 1863 to 1915. 52 & 53 Vict. c. 34.



THE POST OFFICE ACT, 1908.

8 EDW. 7, c. 48.

* * * * *

Land.

Holding of
lands by
Postmaster-
General.

45.—(1) For the purpose of acquiring and holding land the Postmaster-General for the time being shall continue to be a corporation sole by the name of His Majesty's Postmaster-General, and by that name shall have perpetual succession and an official seal.

(2) All land vested in the Postmaster-General shall be held in trust for His Majesty for the purpose of the Post Office.

Power of
Postmaster-
General for
purchase of
land.

46.—(1) The Postmaster-General, with the consent of the Treasury, may purchase land for the purpose of the Post Office.

(2) With respect to any such purchase of land in the United Kingdom the following provisions shall have effect (that is to say):—

8 & 9 Vict.
c. 18.
8 & 9 Vict.
c. 19.

- (a) The Lands Clauses Acts shall be incorporated with this Act, except the provisions relating to access to the special Act, and in construing those Acts for the purposes of this section "the special Act" shall be construed to mean this Act, and "the promoters of the undertaking" shall be construed to mean the Postmaster-General, and "land" shall be construed to have the meaning given to it by this Act:
- (b) The bond required by section eighty-five of the Lands Clauses Consolidation Act, 1845, and by section eighty-four of the Lands Clauses Consolidation (Scotland) Act, 1845, shall be under the seal of the Postmaster-General, and shall be sufficient without sureties:
- (c) The provisions of the incorporated Acts with respect to the purchase of land compulsorily shall not be put in force until the sanction of Parliament has been obtained in manner in this Act mentioned:
- (d) Three months at the least before an application is made to Parliament for sanction to the compulsory purchase of land under this Act, the Postmaster-General, with the consent of the Treasury, shall serve a notice on every owner or reputed owner, lessee or reputed lessee, and occupier of any land intended to be so purchased, describing the land intended to be taken, and in general terms the purposes to which it is to be applied, and stating the intention of the Treasury to obtain the sanction of Parliament to the purchase thereof, and inquiring whether the person so served assents or dissents to the taking of his land, and requesting him to forward to the Treasury any objections he may have to his land being taken:
- (e) The Treasury shall, at some time after the service of the notice, make a local inquiry by a competent officer into the objections made by any persons whose land is required to be taken, and by other persons, if any, interested in the subject matter of the inquiry:

(f) The Treasury, if satisfied after the inquiry has been made that the land ought to be taken, may submit a Bill to Parliament containing provisions authorising the Postmaster-General to take the land, and any such Bill shall be deemed to be a Public Bill, and, if passed into an Act, to have conveyed the sanction of Parliament to the purchase compulsorily of the land therein mentioned or referred to, and the period for the compulsory purchase shall be three years after the passing of the Act: Provided that, if while the Bill is pending in either House of Parliament a petition is presented against anything comprised therein, the Bill may be referred to a Select Committee and the petitioner shall be allowed to appear and oppose as in the case of Private Bills.

(3) The Chancellor and Council of the Duchy of Lancaster may, if they think fit, agree with the Postmaster-General for the sale of, and absolutely make sale of, for such sum of money as to the said Chancellor and Council appear sufficient consideration for the same, any land belonging to His Majesty in right of the said duchy, which, for the purpose of the Post Office, the Postmaster-General may deem it expedient, with the consent of the Treasury, to purchase, and the land may be assured to the Postmaster-General, and the money shall be paid and dealt with as if the land had been sold under the authority of the Duchy of Lancaster Lands Act, 1855.

18 & 19 Vict.
c. 58.

(4) For the purposes of this section and the section of this Act the marginal note whereof is "Holding of lands by Postmaster-General" the expression "land" shall include any right or easement in, over, or in respect of land.

47.—(1) The Postmaster-General may, with the consent of the Treasury, sell, exchange, lease, or surrender on any terms, any land for the time being vested in him, and on any such exchange may give or receive any money for equality of exchange; and may sell either by public auction or by private contract, and may make any stipulations, as to title or otherwise, in any conditions of sale or contract for sale or exchange, and may buy in at any auction, and may rescind or vary any contract for sale or exchange, and may re-sell or re-exchange any such land.

Power of
Postmaster-
General to
sell or ex-
change lands.

(2) On any sale, exchange, lease, or surrender, the Postmaster-General may stipulate for, create, or reserve all such rights or easements as may be deemed proper.

(3) A person dealing with the Postmaster-General in respect of land or rights in or over land, whether as vendor, lessor, purchaser, lessee, or otherwise, shall not be bound or entitled to inquire whether the consent of the Treasury has been given to that dealing, or whether the dealing is in fact authorised by any Act relating to the Post Office.

*

*

*

*

*



THE EDUCATION ACT, 1921.

11 & 12 GEO. 5, c. 51.

* * * * *

PART IX.

GENERAL.

*Acquisition, appropriation and alienation of Land.*Power to
acquire land.

109. A local education authority may for the purposes of their powers and duties under this Act purchase or take on lease any land or any right over land.

Purchase of
land by
agreement.

110. For the purpose of the purchase of land under this Act by agreement the Lands Clauses Acts (except the provisions thereof with respect to affording access to the special Act) shall be incorporated with this Act, and in construing those Acts for the purposes of this section the special Act shall be construed to mean this Act, and the promoters of the undertaking shall be construed to mean the local education authority, and land shall be construed to include any right over land.

Purchase of
land com-
pulsorily.

111. A local education authority may be authorised to purchase land compulsorily for the purpose of any of their powers or duties under this Act by means of an order submitted to the Board of Education and confirmed by the Board in accordance with the provisions contained in the Fifth Schedule to this Act.

Application
of the School
Sites Acts.

112. For the purpose of the purchase of land under this Act by a local education authority, the School Sites Acts shall apply as if the local education authority were trustees or managers of a school within the meaning of those Acts, and land may be acquired either under the foregoing provisions of this Act or under the School Sites Acts (*b*), or partly under the said provisions and partly under the School Sites Acts.

Appropriation of land
for educational
purposes.

113.—(1) A local education authority may—

- (i) appropriate, with the consent of the Board of Education, for the purpose of higher education, any land acquired by them for the purposes of elementary education, or taken over by them as successors of a school board; and
- (ii) appropriate, with the consent of the Board of Education, for the purposes of elementary education, any land acquired by them for the purpose of higher education, either under this Act or the Education Act, 1902, or for similar purposes under any Act repealed by the last mentioned Act (*c*); and

(*b*) These Acts give certain persons, including owners under disability and limited owners, powers to convey or grant lands for the purposes of school sites.

(*c*) But not, apparently, land acquired under the Education Act, 1918.

(iii) appropriate, with the consent of, and after inquiry by, the Minister of Health, for any of the purposes of this Act, any land acquired by them otherwise than in their capacity as local education authority.

(2) The council of a non-county borough or urban district may appropriate, with the consent of, and after inquiry by, the Minister of Health, for the purpose of their power to supply or aid the supply of higher education, any land acquired by them under any other power.

(3) The appropriation of land by a local education authority or a council under this section shall be subject in any case to any special covenants or agreements affecting the use of the land in their hands.

(4) Where the capital expenditure in connexion with any land appropriated under this section or any loan for the purpose of repaying that expenditure or any part of that expenditure or loan has been or is charged on, or raised within, any special part of the area of the local education authority or council, and the Board of Education, or in the case of land appropriated under this section and acquired by an authority otherwise than in their capacity as local education authority, the Minister of Health, are or is of opinion that the use of the land for the purposes for which it is appropriated will alter the area benefited by the expenditure, the Board of Education, or the Minister of Health, as the case requires, shall order such equitable adjustment in respect thereof to be made as they or he may think right in the circumstances, and the local education authority or council shall comply with any order so made.

114. The council of any county, borough, or urban district may, with the consent of the Board of Education, appropriate any land held by them in their capacity as local education authority for any of the purposes of the council, otherwise than in their capacity as local education authority approved by the Minister of Health:

Appropriation to other purposes of land acquired for educational purposes.

Provided that the council shall not on any lands so appropriated—

(a) create or permit any nuisance; or

(b) sink any well for the public supply of water or construct any cemetery, burial ground, destructor, station for generating electricity, sewage farm, or hospital for infectious disease, unless, after local inquiry and consideration of any objections made by persons affected, the Minister of Health, subject to such conditions as he may think fit and subject in the case of a generating station to the provisions of section eleven of the Electricity (Supply) Act, 1919, authorises the work or construction.

9 & 10 Geo. 5, c. 100.

115.—(1) The provisions of the Charitable Trusts Acts, 1853 to 1894, which relate to the sale, leasing, and exchange of lands belonging to any charity, shall extend to the sale, leasing, and exchange of the whole or any part of any land or schoolhouse belonging to a local education authority for the purposes of elementary education which may not be required by that authority, with this modification, that

Alienation of land.

the Board of Education shall for the purposes of this section be deemed to be substituted in those Acts for the Charity Commissioners.

(2) A council shall have power, with the consent of and after inquiry by the Board of Education, to alienate any land acquired or held by them for the purposes of higher education under this Act or any enactment repealed by this Act, and, in the case of the sale of any such land, the proceeds of sale shall be applied in such manner as the Minister of Health may sanction towards the discharge of any loan of the council under this Act or any enactment repealed by this Act, or otherwise for any purpose for which capital may be applied by the council under this Act.

Purchase of
land for
purposes of
elementary
school by
managers.

116.—(1) The managers of a public elementary school not provided by a local education authority, and, if they obtain the approval of the Board of Education to the establishment of the school, any persons desirous of establishing a public elementary school, may purchase a schoolhouse for the school or a site for the same, and for that purpose the Lands Clauses Acts (except so much as relates to the purchase of land otherwise than by agreement) shall be incorporated with this Act; and in construing those Acts for the purposes of this section the special Act shall be construed to mean this Act and the promoters of the undertaking shall be construed to mean the managers, and land shall be construed to include any right over land.

(2) The conveyance of any land so purchased may be in the form prescribed by the School Sites Acts, or any of them, with this modification, that the conveyance shall express that the land shall be held upon trust for the purposes of a public elementary school within the meaning of this Act, or some one of those purposes which may be specified, and for no other purpose whatever.

(3) Land may be acquired in pursuance of this section either under the Lands Clauses Acts or under the School Sites Acts, or any of them, or partly under one such Act and partly under another such Act.

Exemption of
assurance of
property for
educational
purposes from
restrictions
under the
Mortmain
Acts.

51 & 52 Vict.
c. 42.

54 & 55 Vict.
c. 73.

55 & 56 Vict.
c. 11.

117.—(1) Any assurance, as defined by section ten of the Mortmain and Charitable Uses Act, 1888, of land or personal estate to be laid out in the purchase of land for educational purposes, whether made before or after the passing of this Act, shall be exempt from any restrictions of the law relating to mortmain and charitable uses, and the Mortmain and Charitable Uses Acts, 1888 and 1891, and the Mortmain and Charitable Uses Amendment Act, 1892, shall not apply with respect to any such assurance.

(2) Every assurance of land or personal estate to be laid out in the purchase of land for educational purposes, including every assurance of land to any local authority for any educational purpose or purposes for which such authority is empowered by any Act of Parliament to acquire land, shall be sent to the offices of the Board of Education in London for the purpose of being recorded in the books of the Board as soon as may be after the execution of the deed or other instrument of assurance, or in the case of a will after the death of the testator.

* * * * *

FIFTH SCHEDULE.

Section 111.

PROVISIONS AS TO THE COMPULSORY ACQUISITION OF LAND.

(1) Where a local education authority propose to purchase land compulsorily under this Act, the local education authority may submit to the Board of Education an order putting in force as respects the land specified in the order the provisions of the Lands Clauses Acts with respect to the purchase and taking of land otherwise than by agreement.

(2) An order under this Schedule shall be of no force unless and until it is confirmed by the Board, and the Board may confirm the order either without modification or subject to such modifications as they think fit, and an order when so confirmed shall, save as otherwise expressly provided by this Schedule, become final and have effect as if enacted in this Act; and the confirmation by the Board shall be conclusive evidence that the requirements of this Act have been complied with, and that the order has been duly made and is within the powers of this Act.

(3) The order shall be in the prescribed form, and shall contain such provisions as the Board may prescribe for the purpose of carrying the order into effect, and of protecting the local education authority and the persons interested in the land, and shall incorporate, subject to the necessary adaptations—

- (a) the Lands Clauses Acts (except section one hundred and twenty-seven of the Lands Clauses Consolidation Act, 1845) as modified by the Acquisition of Land (Assessment of Compensation) Act, 1919; and
- (b) sections seventy-seven to eighty-five of the Railways Clauses Consolidation Act, 1845.

8 & 9 Vict.
c. 18.
9 & 10 Geo. 5,
c. 57.
8 & 9 Vict.
c. 20.

(4) The order shall be published by the local education authority in the prescribed manner, and such notice shall be given both in the locality in which the land is proposed to be acquired, and to the owners, lessees, and occupiers of that land as may be prescribed.

(5) If within the prescribed period no objection to the order has been presented to the Board by a person interested in the land, or if every such objection has been withdrawn, the Board shall without further inquiry confirm the order unless they are of opinion that the land is unsuited for the purpose for which it is proposed to be acquired; but, if such an objection has been presented and has not been withdrawn, the Board shall forthwith cause a public inquiry to be held in the locality in which the land is proposed to be acquired, and the local education authority and all persons interested in the land and such other persons, as the person holding the inquiry in his discretion thinks fit to allow, shall be permitted to appear and be heard at the inquiry.

(6) Where the land proposed to be acquired under the order consists of or comprises land situate in London, or a borough, or urban district, the Board shall appoint an impartial person, not in the employment of any Government Department, to hold the inquiry as

to whether the land proposed to be acquired is suitable for the purposes for which it is sought to be acquired, and whether, having regard to the extent or situation of the land and the purposes for which it is used, the land can be acquired without undue detriment to the persons interested therein or the owners of adjoining land, and such person shall have for the purpose of the inquiry all the powers of an inspector of the Ministry of Health, and, if he reports that the land, or any part thereof, is not suitable for the purposes for which it is sought to be acquired, or that, owing to its extent or situation or the purpose for which it is used, it cannot be acquired without such detriment as aforesaid, or that it ought not to be acquired except subject to the conditions specified in his report, then, if the Board confirm the order in respect of that land, or part thereof, or, as the case may require, confirm it otherwise than subject to such modifications as are required to give effect to the specified conditions, the order shall be provisional only, and shall not have effect unless confirmed by Parliament.

Where no part of the land is so situated as aforesaid, before confirming the order, the Board shall consider the report of the person who held the inquiry, and all objections made thereat.

(7) Where the land proposed to be acquired is the site of an ancient monument or other object of archæological interest or is the property of any local authority or has been acquired by any corporation or company for the purposes of a railway, dock, canal, water or other public undertaking or at the date of the order forms part of any park, garden or pleasure ground or is otherwise required for the amenity or convenience of any dwelling house, the order shall be provisional only and shall not have effect unless confirmed by Parliament.

(8) In construing for the purposes of this Schedule or any order made thereunder any enactment incorporated with the order, this Act together with the order shall be deemed to be the special Act, and the local education authority shall be deemed to be the promoters of the undertaking.

(9) Where the land is glebe land or other land belonging to an ecclesiastical benefice, the order shall provide that sums agreed upon or awarded for the purchase of the land, or to be paid by way of compensation for the damage to be sustained by the owner by reason of severance or other injury affecting the land, shall not be paid as directed by the Lands Clauses Acts, but shall be paid to the Ecclesiastical Commissioners to be applied by them as money paid to them upon a sale, under the provisions of the Ecclesiastical Leasing Acts, of land belonging to a benefice.

(10) In this Schedule the expression "prescribed" means prescribed by the Board of Education.

Section VII. (b).—Provision of Public Services by Semi-Public or Private Authorities.

THE PARLIAMENTARY DEPOSITS AND BONDS
ACT, 1892.

55 & 56 VICT. c. 27.

An Act to authorise the release of certain Deposits, and the cancellation of certain Bonds, made or given to secure the performance of undertakings authorised by Parliament.

[27th June, 1892.]

BE it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, as follows:

1.—(1.) Where in pursuance of any general or special act of parliament, or of any rules made thereunder, moneys or securities have been deposited with, or are standing in the name of, the Paymaster-General to secure the completion by any company of any undertaking authorised by parliament, or by any certificate issued under the authority of an act of parliament, and the undertaking has not been completed within the time limited in that behalf, the High Court may, notwithstanding anything in any such general or special act or rules, order that the moneys or securities (in this act called the deposit fund), or any part thereof, be applied towards compensating any landowners and other persons whose property has been interfered with or otherwise rendered less valuable by the commencement, construction, or abandonment of the undertaking, or any portion thereof, or who have been subjected to injury or loss in consequence of any compulsory powers of taking property given in connexion with the undertaking, and have received no compensation or inadequate compensation for such injury or loss; and also, in the case of a tramway company, towards compensating the road authorities for the expenses incurred by them in taking up any tramway or materials connected therewith placed by the tramway company in or on any road vested in or maintainable by the road authorities, and in making good all damage caused to such roads by the construction or abandonment of the tramway.

Power to
release
deposits.

(2.) Subject to payment of any such compensation, and notwithstanding any provision as to forfeiture to the Crown, the High Court may, if a receiver has been appointed, or the company is insolvent and has been ordered to be wound up, or the undertaking has been abandoned, order that the deposit fund or any part thereof be paid or transferred to the receiver or to the liquidator of the company, or be applied as part of the assets of the company for the benefit of the creditors thereof.

(b) See Book II., Chap. VIII., *ante*, p. 382.

(3.) Subject to such application as aforesaid the High Court may, after such public notice as to the Court seems reasonable, order that the deposit fund or any part thereof be paid or transferred to the depositors or the persons claiming through or under them.

(4.) If any money or securities deposited with or standing in the name of the Paymaster-General for the purposes of this section on or before the thirty-first of March, one thousand eight hundred and ninety are not claimed by or on behalf of the depositors thereof within ten years after the passing of this Act, the Treasury may pay or transfer the same to the National Debt Commissioners to be applied by them towards the reduction of the National Debt.

(5.) This section shall apply to any person or body of persons authorised by parliament or by any such certificate as aforesaid to carry out an undertaking as if he or they were a company.

Power to
cancel bonds.

2. Where in pursuance of any general or special act of parliament any bond has been given to secure the completion of any undertaking authorised by parliament, or by any certificate issued under the authority of an act of parliament, and the undertaking has not been completed within the time limited in that behalf, the money thereby secured shall be applicable to the same purposes as the deposit fund hereinbefore mentioned, and the Treasury may, if they think fit, cancel the bond on proof to their satisfaction that the money thereby secured has been applied or is not required for those purposes.

* * * * *



THE LIGHT RAILWAYS ACT, 1896 (c).

59 & 60 VICT. c. 48.

An Act to facilitate the Construction of Light Railways in Great Britain. [14th August, 1896.]

* * * * *

Application
for orders
authorising
light rail-
ways.

2. An application for an order authorising a light railway under this act shall be made to the Light Railway Commissioners, and may be made—

- (a) by the council of any county, borough, or district, through any part of which the proposed railway is to pass; or
- (b) by any individual, corporation, or company; or
- (c) jointly by any such councils, individuals, corporations, or companies.

Powers of
local autho-
rities under
order.

3.—(1.) The council of any county, borough, or district, may if authorised by an order under this act—

- (a) undertake themselves to construct and work, or to contract for the construction or working of, the light railway authorised;
- (b) advance to a light railway company, either by way of loan or as part of the share capital of the company, or partly in one

(c) *Vide ante*, p. 385.

way and partly in the other, any amount authorised by the order;

- (c) join any other council or any person or body of persons in doing any of the things above mentioned; and
- (d) do any such other act incidental to any of the things above mentioned as may be authorised by the order.

(2.) Provided that—

- (a) an order authorising a council to undertake to construct and work or to contract for the construction or working of a light railway, or to advance money to a light railway company, shall not be made except on an application by the council made in pursuance of a special resolution passed in manner directed by the first schedule to this act; and
- (b) a council shall not construct or work or contract for the construction or working of any light railway wholly or partly outside their area, or advance any money for the purpose of any such railway, except jointly with the council of the outside area, or on proof to the satisfaction of the Board of Trade that such construction, working, or advance is expedient in the interests of the area of the first-mentioned council, and in the event of their being authorised so to do their expenditure shall be so limited by the order as not to exceed such amount as *the Board of Trade think fit under the circumstances* (d).

* * * * *

7.—(1.) Where an application for authorising a light railway under this act is made to the Light Railway Commissioners, those Commissioners shall, in the first instance, satisfy themselves that all reasonable steps have been taken for consulting the local authorities, including road authorities, through whose areas the railway is intended to pass, and the owners and occupiers of the land it is proposed to take, and for giving public notice of the application, and shall also themselves by local inquiry and such other means as they think necessary possess themselves of all such information as they may consider material or useful for determining the expediency of granting the application.

Consideration of application by Light Railway Commissioners.

(2.) The applicants shall satisfy the Commissioners that they have—

- (a) published once at least in each of two consecutive weeks, in some newspaper circulating in the area or some part of the area through which the light railway is to pass, an advertisement describing shortly the land proposed to be taken and the purpose for which it is proposed to be taken, naming a place where a plan of the proposed works and the lands to be taken, and a book of reference to the plan, may be seen at all reasonable hours, and stating the quantity of land required; and

(d) The words in italics are an amendment introduced by the Light Railways Act, 1912, s. 5 (1).

- (b) served notice in the prescribed manner on every reputed owner, lessee, and occupier of any land intended to be taken, describing in each case the land intended to be taken, and inquiring whether the person so served assents to or dissents from the taking of his land, and requesting him to state any objections he may have to his land being taken.

The plan and book of reference shall be in the prescribed form, and for the purposes of this section the expression "prescribed" shall mean prescribed by rules made under this act.

(3.) The Commissioners shall before deciding on an application give full opportunity for any objections to the application to be laid before them, and shall consider all such objections, whether made formally or informally.

(4.) If after consideration the Commissioners think that the application should be granted, they shall settle any draft order submitted to them by the applicants for authorising the railway, and see that all such matters (including provisions for the safety of the public and particulars of the land proposed to be taken) are inserted therein, as they think necessary for the proper construction and working of the railway.

(5), (6) (e).

* * * * *

Provisions
which may
be made by
the order.

11. An order under this act may contain provisions consistent with this act for all or any of the following purposes—

- (a) the incorporation, subject to such exceptions and variations as may be mentioned in the order, of all or any of the provisions of the *Clauses Acts* as defined by this act. Provided that where it appears to the Board of Trade that variations of the *Lands Clauses Acts* are required by the special circumstances of the case, the Board of Trade shall make a special report to parliament on the subject, and that nothing in this section shall authorise any variation of the provisions of the *Lands Clauses Acts* with respect to the purchase and taking of land otherwise than by agreement;

* * * * *

Application
of general
Railway
Acts.

12.—(1.) The *Clauses Acts*, as defined by this act, and the enactments mentioned in the second schedule to this act, shall not apply to a light railway authorised under this act except so far as they are incorporated or applied by the order authorising the railway.

(2.) Subject to the foregoing provisions of this act and to any special provisions contained in the order authorising the railway, the general enactments relating to railways shall apply to a light railway under this act in like manner as they apply to any other railway; and for the purposes of those enactments, and of the *Clauses Acts* so far as they are incorporated or applied by the order authorising the railway, the light railway company shall be deemed a railway company, and the order under this act a special act, and any provision

(e) Repealed, *Railways Act, 1921* (11 & 12 Geo. 5, c. 55), Sched. 9.

thereof a special enactment. Provided that a light railway shall not be deemed to be a railway within the meaning of the Railway Passenger Duty Act, 1842, and that no duties shall hereafter be levied in respect of passengers conveyed on a light railway constructed under this act in respect of the conveyance of such passengers upon such railway. 5 & 6 Vict. c. 79.

13.—(1.) Where any order under this act incorporates the Lands Clauses Acts, any matter which under those acts may be determined by the verdict of a jury, by arbitration, or by two justices, shall for the purposes of the order be referred to and determined by a single arbitrator appointed by the parties, or if the parties do not concur in the appointment of a single arbitrator then by the Board of Trade, and the provisions of this act shall apply with respect to the determination of any such matter in lieu of those of the Lands Clauses Acts relating thereto. Provided that in determining the amount of compensation, the arbitrator shall have regard to the extent to which the remaining and contiguous lands and hereditaments belonging to the same proprietor may be benefited by the proposed light railway. Mode of settling purchase-money and compensation for taking of land.

(2.) The Board of Trade may, with the concurrence of the Lord Chancellor, make rules fixing a scale of costs to be applicable on any such arbitration, and may, by such rules, limit the cases in which the costs of counsel are to be allowed (f).

(3.) The Arbitration Act, 1889, shall apply to any arbitration under this section. 52 & 53 Vict. c. 49.

14. Any order under this act may, notwithstanding anything in the Lands Clauses Acts, authorise the payment to trustees of any purchase-money or compensation not exceeding five hundred pounds. Payment of purchase-money or compensation.

* * * * *

28. In this act, unless the context otherwise requires,—

Definitions.

The expression “light railway company” includes any person or body of persons, whether incorporated or not, who are authorised to construct, or are owners or lessees of, any light railway authorised by this act, or who are working the same under any working agreement:

The expression “Clauses Acts” means the Lands Clauses Acts, the Railways Clauses Consolidation Act, 1845, and the Railways Clauses Act, 1863, and the Companies Clauses Acts, 1845 to 1889.

The expression “share capital” includes any capital, whether consisting of shares or of stock, which is not raised by means of borrowing.

* * * * *

(f) See the Light Railways (Costs) Rules, 1898, S. R. & O. 1898, No. 496, L. 13.



THE LIGHT RAILWAYS ACT, 1912.

2 & 3 GEO. 5, c. 19.

* * * * *

Power to
modify s. 92
of 8 & 9
Vict. c. 18.

4. Notwithstanding anything contained in section eleven of the principal Act, provision may be made by an order under the principal Act for varying section ninety-two of the Lands Clauses Consolidation Act, 1845, as incorporated in the order in such a manner as to provide for the taking of part only of a house, building, or manufactory, except where it is shown to the authority to whom the question of disputed compensation is submitted that that part cannot be severed from the remainder of the property without material detriment thereto, but no such provision shall be made unless the Light Railway Commissioners are satisfied that special notice of the proposal to acquire part only of the house, building, or manufactory has been given under paragraph (b) of subsection (2) of section seven of the principal Act to the owner, lessee, and occupier of the house, building, or manufactory.

* * * * *

8 (g).

Arbitration.

9.—(1) Any matter which under any light railway order, made after the passing of this Act, is to be determined by arbitration shall, subject to any special provisions of the order, be determined by the Board of Trade, or, if the Board of Trade think fit, by a single arbitrator appointed by them (h).

(2) The Board of Trade Arbitrations, &c., Act, 1874, shall apply with reference to the determination by the Board of any matter referred to them, and to the appointment of an arbitrator, as if this Act or the light railway order were a special Act within the meaning of section four of the said Board of Trade Arbitrations, &c., Act, 1874.

(3) The Arbitration Act, 1889, shall apply for the purpose of the determination of any matter by an arbitrator appointed by the Board of Trade as if the arbitration were pursuant to a submission.

* * * * *

Short title.

11. This Act may be cited as the Light Railways Act, 1912, and shall be read as one with the principal Act, and the principal Act and this Act may be cited together as the Light Railways Acts, 1896 and 1912.

(g) Repealed, Railways Act, 1921 (11 & 12 Geo. 5, c. 55), Sched. 9.

(h) As amended by Railways Act, 1921, Sched. 9.



RAILWAYS ACT, 1921.

11 & 12 GEO. 5, c. 55.

* * * * *

PART V.

68.—(1) Orders under the Light Railways Act, 1896, as amended by any subsequent enactment (which Act as so amended is in this Part of this Act referred to as “the principal Act”) shall, instead of being made by the Light Railway Commissioners and confirmed by the Minister of Transport as successor to the Board of Trade in manner provided by the principal Act, be made by the Minister, and accordingly:—

Amendment
of procedure
for making
Light Rail-
way Orders.

(a) The powers of the Light Railway Commissioners shall be transferred to the Minister;

(b) The Minister on considering an application for an order shall take all such matters into consideration and do all such things as he, as successor of the Board of Trade, is under the principal Act required to take into consideration and do on submission of an order to him for confirmation;

and the principal Act shall have effect as if for references to the Light Railway Commissioners there were substituted references to the Minister, and for references to the confirmation of orders by the Minister, as successor to the Board of Trade, there was substituted references to the making of orders by the Minister:

Provided that any limitation on the duration of the powers of the Light Railway Commissioners contained in the principal Act or in any Act extending the duration of those powers shall not apply to the Minister.

(2) If the Minister is of opinion for any of the reasons mentioned in sub-section (3) of section nine of the principal Act that the proposals of the promoters ought to be submitted to Parliament he may, if he thinks fit, make an order as a provisional order and submit the proposals to Parliament by bringing in a Bill for the confirmation of the order, and subsections (2) and (3) of section one of the Light Railways Act, 1912, shall apply with respect to such Bill.

(3) Where an application for an order under the principal Act has been made to the Light Railway Commissioners before the passing of this Act, those Commissioners may, within six months next after the passing of this Act, proceed with the application and submit to the Minister for confirmation any order made by them before the expiration of those six months, and in any such case the principal Act shall apply with respect to the order as if this section had not been passed, but at the end of the said six months the Light Railway Commissioners shall cease to hold office.

Save as aforesaid, any application for an order under the principal Act shall be proceeded with as if it had been made under the principal Act as amended by this section.

69. Where an order made under the principal Act incorporates the Lands Clauses Acts, it may incorporate those Acts subject to any modifications contained in the order, being modifications of those Acts made or authorised to be made by the Development and Road Improvement Funds Act, 1909 (i).

Provisions as
to purchase
of land.

* * * * *

PRECEDENTS

UNDER THE LANDS CLAUSES ACTS.



No. I.

AGREEMENT *for SALE between an OWNER and a* COMPANY.

An Agreement made the day of between A., of &c.
(hereinafter called the vendor), of the one part, and B., agent for
the Company (hereinafter called the purchasers) of the other
part.

1. The vendor agrees to sell and the purchasers agree to purchase,
at the price of £ all that, &c., which premises are more
particularly described in the schedule hereto, and are delineated on
the plan annexed hereto, and are thereon coloured red, and the fee
simple and inheritance thereof free from incumbrances [together
with all mines and minerals situate thereunder (a)].

2. The said price includes full compensation to the vendor for
all injury done to his lands by the purchasers in the execution of
their statutory powers, and is in full satisfaction of all accommoda-
tion works which the purchasers are compellable to construct for
the convenient occupation of the vendor's lands.

3. The purchasers undertake to pay the said sum of £ on
the day of at , at which time and place the purchase
shall be completed, and on payment of the purchase-money the
purchasers are to be let into possession or into receipt of rents and
profits, and if from any cause, other than the wilful default of the
vendor, the completion of the purchase is delayed, interest at the
rate of £5 per cent. until the date of payment shall be paid on the
said sum of £ .

(a) The Rail. Cl. Act, 1845, and the Waterworks Cl. Act, 1847, are incor-
porated into a large number of private Acts; these Acts exclude mines and
minerals from a purchase unless they are specially included. Hence these words
must be inserted in a contract which is intended to include mines and minerals.

4. The purchasers may at any time hereafter, on depositing in the Bank the said sum of £ in the joint names of the vendor and some person nominated on their behalf, take possession of the said lands and premises.

5. The vendor shall within after being requested so to do, send an abstract of his title to the said lands and premises to the solicitor of the purchasers, and shall produce such deeds, or other muniments of title, for inspection, as the solicitor of the purchasers shall require (b).

6. All costs of the vendor's solicitor of and incident to this agreement, and the conveyance of the said lands and premises [and the fee of £ to the vendor's surveyor], shall be paid by the purchasers.

Signed by A. (the vendor).

B. (on behalf of the Company,
the purchasers).

SCHEDULE.

NOTE.—When it is intended that the amount of compensation should be assessed in any of the methods contained in the Lands Clauses Act, 1845, it is unnecessary to make an agreement, since a notice to treat, followed by the assessment of purchase-money, forms a binding contract, on which specific performance will be decreed. (*Harding v. Metropolitan Rail. Co.* (1872), L. R. 7 Ch. 154; 41 L. J. Ch. 371; and *vide ante*, p. 228.) If an agreement is preferred, the form given above can be easily altered by inserting instead of the words “at the price of £ ” the words “at such price as shall be fixed by an arbitrator or a jury, &c.”

No. II.

AGREEMENT for SALE *in consideration of a RENT-CHARGE.*

An Agreement made the day of between A., of &c. (hereinafter called the vendor), of the one part, and B., agent for the Company (hereinafter called the purchasers), of the other part.

1. The vendor agrees to sell, and the purchasers agree to pur-

(b) Sects. 75—80 of L. Cl. Act, 1845, contain special provisions to meet the case of an insufficient title or refusal to convey, and no agreement as to these points is required.

chase, in consideration of a rent-charge of £ , clear of all taxes and deductions, to be paid to the vendor, his heirs and assigns, all that, &c., which premises are more particularly described in the schedule hereto, and are delineated on the plan annexed thereto, and are thereon coloured red, and the fee simple and inheritance thereof free from incumbrances, [together with all mines and minerals situate thereunder (c)].

2. The said rent-charge includes full compensation to the vendor for all injury done to his lands by the purchasers in the execution of their statutory powers, and is in full satisfaction of all accommodation works which the purchasers are compellable to construct for the convenient occupation of the vendor's lands.

3. The purchase shall be completed on the day of , at , and the said rent-charge shall be paid to the vendor, his heirs and assigns, by equal quarterly [*or* half-yearly] portions, the first of such payments to be made on the day of , clear of all taxes and deductions, and on completion of the purchase the purchasers are to be let into possession, or into receipts of rents and profits, and up to that day all outgoings (if necessary) are to be apportioned, and if from any cause other than the wilful default of the vendor the completion of purchase is delayed, the said rent-charge shall nevertheless be paid.

4. The vendor shall, within after being required so to do, send an abstract of his title to the said lands and premises to the solicitor of the purchasers, and shall produce such deeds or other muniments of title for inspection as the solicitor for the purchasers shall require (d).

5. All costs of the vendor's solicitor of and incident to this agreement, and the conveyance of the said lands and premises [and the fee of £ to the vendor's surveyor], shall be paid by the purchasers.

Signed by A. (the vendor).

B. (on behalf of the Company, the purchasers).

SCHEDULE.

(c) See note (a), *ante*, p. 620.

(d) See note (b), *ante*, p. 621.

No. III.

AGREEMENT *fixing Amount of Compensation when*
LANDS have been injuriously affected.

Memorandum of Agreement between A. B., of the one part, and
 C. D., on behalf of the Company, of the other part.

The said company agree to pay and the said A. B. agrees to
 accept the sum of £ in full satisfaction of all damages sus-
 tained or to be sustained by him by reason of the execution by the
 said company of the works authorized by the [special] Act and the
 Acts incorporated therewith.

The said company agree to pay the said sum on the day
 of , or in default to pay interest on the same from such day
 at the rate of per cent.

Dated the day of .

(Signed) A. B.

C. D. on behalf of the Company.

No. IV.

NOTICE *to* TREAT.

To A. B. of &c.

The Company, in pursuance of the [special] Act and the
 Acts incorporated therewith, give you notice that they require to
 purchase and take for the purposes of their undertaking the lands
 and hereditaments of which particulars are contained in the schedule
 hereto, and which said lands and hereditaments, so required, are
 delineated on the plan attached hereto, and thereon coloured red.
 And the said company hereby demand of you the particulars of
 your estate and interest in the said lands and hereditaments and of
 the claims made by you in respect thereof, and the said company
 hereby give you notice that they are willing to treat for the pur-
 chase thereof, and as to the compensation to be made to you for the
 damage that may be sustained by you by reason of the execution
 of the works of the said undertaking, and the said company also

PRECEDENTS.

give you notice that if for twenty-one days after the service hereof you fail to state such particulars or to treat with the said company in respect of the said lands and hereditaments, or if you and the said company shall differ as to the amount of compensation to be paid, they will, in pursuance of the provisions of sect. 21 of the Lands Clauses Consolidation Act, 1845, proceed to procure the amount of compensation to be settled in the manner prescribed by the said Acts, and the said company, in case you claim compensation, as having a greater interest than as tenant at will, in respect of an unexpired term or interest under any lease or grant of the said lands and hereditaments, do hereby require you, by virtue of sect. 122 of the Lands Clauses Consolidation Act, 1845, to produce such lease or grant or the best evidence thereof in your power.

Dated this day of .

(Signed) ,

Secretary to the said Company.

SCHEDULE.

Parish and County or Place.	No. on Plan and Book of Reference deposited with the Clerk of the Peace for the County of Oxford.	Description of Lands and Hereditaments.
Henley, Oxfordshire.	50	House, shop and yard.

NOTE.—Herewith is sent a form of claim [Precedent No. 5], which you are requested to fill up and return to the solicitor of the said company at within twenty-one days from the date of the service hereof.

No. V.

FORM of CLAIM by an OWNER.

Form of claim required under a notice to treat served on me on the _____ day of _____ by the _____ Company.
The particulars of my estate and interest in the lands and hereditaments comprised in the said notice, and of the claims made by me in respect thereof.

Name, Residence, or Business, or Description.	No. on Plan referred to on accompanying Notice to Treat.	Situation and Description of the Lands and Hereditaments.	The Estate, whether Freehold, Copyhold, or Leasehold. If Freehold, state whether abso- lutely entitled, or in Mortgage, &c. If Copy- hold, state the Manor, Fines, Quit-rents, or Heriots. If Leasehold, state Landlord's Name, rent reserved, and Length of Term. If Yearly Tenancy, or a less Interest, state Date of Commencement of Tenancy and any special Covenants or circumstances.	Name of Occupiers, whether Lessees, or Yearly or other Tenants, the Rent paid, the Terms of Years, and the Commencement of such Terms.	Particulars of Claim, specifying separately the Amount claimed for the Value of Property and for Compensation, Trade Loss, or other Injury.
A. B. of &c.	2	No. 9, New Road, in the town of _____, in the county of _____.	Leasehold. Term expires Lady-day, 1920. Rental 120/. Landlord's name is Thomas Jones.	I am in occupa- tion myself.	I claim as the value of my leasehold in- terest 1,000/. I claim further as compensation for trade loss and other injury 1,500/.

[Signature.] A. B. of &c.
[Name and address of A. B.'s solicitor.]
[Name and address of A. B.'s surveyor.]

No. VI.

NOTICE to TREAT for an EASEMENT.

To A. B. of &c.

The Company, in pursuance of the [special] Act and the Acts incorporated therewith, give you notice that they require for the purposes of their undertaking the easement or right of constructing a tunnel in the line and according to the levels shown on the plans and sections annexed hereto under the lands and hereditaments particularly described in the schedule hereto, and delineated on the plan attached hereto and thereon coloured red, and the said company hereby demand of you the particulars of your estate and interest in the said lands and hereditaments, and of the claims made by you in respect of the said easement or right of constructing a tunnel, and the said company hereby give you notice that they are willing to treat for the purchase of the said easement or right of constructing a tunnel, and as to the compensation to be sustained by you by reason of the execution of the works of the said undertaking. If for twenty-one days after the service hereof you fail to state such particulars, or to treat with the said company in respect of the said easement or right of tunnelling, the said company will, in pursuance of sect. 21 of the Lands Clauses Consolidation Act, 1845, proceed to procure the amount of compensation to be settled in the manner prescribed by the said Acts; and the said company, in case you claim compensation as having a greater interest in the said lands and hereditaments than as tenant at will in respect of an unexpired term or interest under any lease or grant, do hereby require you, in accordance with sect. 122 of the Lands Clauses Consolidation Act, 1845, to produce such lease or grant, or the best evidence thereof in your power.

Dated this day of .

(Signed) ,

Secretary to the said Company.

SCHEDULE referred to.

Parish and County or Place.	No. on Plan and Book of Reference deposited with the Clerk of the Peace for the County of Oxford.	Description of Lands and Hereditaments.
Henley, Oxfordshire.	81	Farm land.

[Annex plan on which the lands and hereditaments are delineated and coloured.]

[Annex plans and sections showing the line and levels of the proposed tunnel.]

NOTE.—Herewith is sent a form of claim which you are requested to fill up and to return to the solicitor of the said company at _____, within twenty-one days from the date of the service hereof.

No. VII.

NOTICE *to produce LEASE under Sect. 122 of the Lands Clauses Act, 1845.*

To A. B.

Whereas you claim compensation in respect of an unexpired term under a lease in the lands comprised in a notice to treat served upon you by the _____ Company, on the _____ day of _____, Take notice that you are hereby required by the said company to produce the said lease or the best evidence thereof in your power; and further take notice that if after receiving this demand made in writing by the said company, you do not produce the said lease or the best evidence thereof in your power within twenty-one days, you will be considered as a tenant holding only from year to year, and entitled to compensation accordingly as provided by sect. 122 of the Lands Clauses Consolidation Act, 1845.

Dated this _____ day of _____

(Signed) _____,
Solicitor to the said Company.

No. VIII.

NOTICE to YEARLY TENANT *requiring* POSSESSION of
LANDS *before the Expiration of his Tenancy.*

To A. B. of &c.

Take notice that the Company, in pursuance of their powers under the [special] Act, and the Acts incorporated therewith, require you to give up possession of the lands occupied by you and particularly described in the schedule hereto and coloured red on the annexed plan, on the day of ; and further take notice that you are entitled to compensation for the value of your unexpired term and interest in the said lands, and to have the amount of such compensation determined by two justices if no agreement is come to about the same.

Dated this day of .

(Signed) ,
Secretary to the Company.

SCHEDULE.

No. IX.

COUNTER-NOTICE *by an OWNER under Sect. 92 of*
the Lands Clauses Act, 1845.

To the Company.

Whereas on the day of notice was served upon me that the Company required to purchase and take for the purposes of their undertaking certain messuages and hereditaments therein described; and whereas the said messuages and hereditaments are a part only of a house or other building or manufactory known as , and I am willing and able to sell and convey my interest in the whole; Now, therefore, take notice that I require you to purchase and take my interest in the whole of the said house or other building or manufactory.

Dated this day of .

(Signed) A. B.

No. X.

WITHDRAWAL of NOTICE to TREAT by COMPANY
after receiving a Counter-notice.

To A. B. of &c.

Whereas on the day of a notice was served upon you by the Company requiring to purchase and take for the purposes of their undertaking certain messuages and hereditaments therein described; and whereas on the day of a counter-notice was served by you upon the said company, requiring the said company to purchase and take your interest in the whole of a certain house or other building or manufactory, of which the said messuages and hereditaments are a part only, and stating that you were willing and able to sell and convey your interest in the whole; Now, therefore, the said company give you notice that they withdraw the said notice served upon you on the day of .

Dated this day of

(Signed) C. D.

Secretary to the said Company.

No. XI.

NOMINATION of Two SURVEYORS under Sect. 9 of
the Lands Clauses Act, 1845.

Whereas the Company, in pursuance of the [special] Act and the Acts incorporated therewith, have agreed to purchase from A. B., the interest which under the said Acts he is enabled to sell and convey in the lands and hereditaments described in the schedule hereto and coloured red on the annexed plan, at a price not less than shall be determined by the valuation of two able practical surveyors; Now, therefore, the said company nominate C. D. and the said A. B. nominates E. F. as surveyors to determine the amount of purchase-money or compensation to be paid for the interest which the said A. B. is under the said Acts entitled to sell and convey in the lands and hereditaments, and the compensation to be paid for any permanent damage or injury to any other lands in which the said A. B. has the same interest as aforesaid.

(Signed) A. B. (the owner),

G. H.,

Secretary to the said Company.

SCHEDULE.

No. XII.

NOTICE of APPLICATION by COMPANY to Two Justices
to appoint a SURVEYOR under Sect. 9 of the Lands
Clauses Act, 1845.

To A. B., of, &c.

Whereas the two surveyors nominated by us in writing on the
day of have failed to agree in a valuation of the
amount of purchase-money or compensation to be paid for the
interest which you are enabled to sell in certain lands and hereditaments [*insert description from nomination*], and of the amount of compensation to be paid for any permanent damage or injury to any other lands in which you have the same interest: Now, therefore, the Company, in accordance with the powers of sect. 9 of the Lands Clauses Consolidation Act, 1845, give you notice that they intend on the day of at o'clock in the forenoon, to apply at to two of his Majesty's justices to nominate a surveyor to determine all matters referred to the valuation of the said two surveyors under our said nomination.

Dated this day of .

(Signed) ,

Secretary to the Company.

No. XIII.

APPOINTMENT of THIRD SURVEYOR by Two Justices
under Sect. 9 of the Lands Clauses Act, 1845.

Whereas application has been made to us, the undersigned E. F. and G. H., being two of his Majesty's justices assembled and acting together at by the Company under the [special] Act, and the Acts incorporated therewith, and sect. 9 of the Lands Clauses Consolidation Act, 1845, to appoint a surveyor; and whereas it has been made to appear to us that the surveyors appointed by the said company and A. B. cannot agree in a valuation of the amount of purchase-money or compensation to be paid for the interest which the said A. B. is enabled to sell under the said Acts in certain lands and hereditaments [*insert description*

from nomination], and of the amount of compensation to be paid for any permanent damage or injury to any other lands in which the said A. B. has the same interest, and that the said company have given due notice of this application to the said A. B.; Now, therefore, we do nominate C. D. to be the third surveyor to make the said valuation.

Given under our hands this day of at .
(Signed) E. F.
G. H.

Two of his Majesty's justices of the peace
assembled and acting together.

. No. XIV.

*NOMINATION of a SURVEYOR by Two Justices under
Sect. 59 of the Lands Clauses Act, 1845.*

Whereas the Company have applied under the [special] Act, and the Acts incorporated therewith, and sect. 59 of the Lands Clauses Consolidation Act, 1845, to us, the undersigned A. B. and C. D., being two of his Majesty's justices of the peace for to nominate a surveyor, and have proved to our satisfaction that E. F., by reason of his absence from the kingdom [*or by reason that he cannot after diligent inquiry be found*], is prevented from treating with them [*or that E. F. failed to appear after due notice to him for that purpose on an inquiry before a jury under the provisions of the said Acts*] as to the amount of purchase-money or compensation to be paid to him for his interest, or the interest which, under the said Acts, he is enabled to sell, in the lands and hereditaments described in the schedule hereto, and coloured red on the plan attached hereto, and the amount of compensation to be paid for the damage (if any) to be sustained by him by reason of the severing of the lands taken from his other lands, or otherwise injuriously affecting such other lands by the exercise of the powers of the said Acts; Now, therefore, we being two of his Majesty's justices assembled and acting together at , do hereby nominate by writing under our hands G. H. of as surveyor to determine the amount of the said purchase-money and compensation.

Given under our hands this day of
(Signed) A. B.
C. D.

SCHEDULE.

with, certain lands and hereditaments [*insert description from notice to treat*]; and whereas no agreement has been come to or award made or verdict given for the purchase-money or compensation to be paid by the said company in respect of your interest in the said lands and hereditaments; and whereas the said company are desirous of entering upon and using the said lands and hereditaments for the purposes of their undertaking under the powers conferred upon them by the 85th and other sections of the Lands Clauses Consolidation Act, 1845; Now we, the said company, hereby give you notice that we intend on the day of , being not less than seven days after the service of this notice, to apply, under sect. 36 of the Railway Companies Act, 1867, to the Board of Trade, for the appointment of a surveyor to determine the value of the interest claimed by you, or which you are under the said Acts enabled to sell, in the said lands and hereditaments, and the amount of compensation for all damage and injury to be sustained by reason of the exercise of the powers conferred by the 85th section of the Lands Clauses Consolidation Act, 1845, as far as such damage and injury are capable of estimation.

Dated this day of .

(Signed) ,

Secretary to the Company.

No. XVII.

APPOINTMENT of SURVEYOR by Board of Trade
under Sect. 36 of the Railway Companies Act,
1867.

Whereas it has been made to appear to the Board of Trade that the Company are empowered to purchase certain lands and hereditaments described in a notice to treat dated the day of , and served upon A. B. on the day of (a copy of which notice is annexed hereto), and that the said company are desirous of entering upon and using the said lands and hereditaments, notwithstanding that no agreement has been come to or award made or verdict given for the purchase-money or compensation to be paid by them in respect of the interest of the said A. B. in the said lands and hereditaments. And whereas the said company, in pursuance of the 36th section of the Railway Companies Act, 1867, have applied to the Board of Trade to appoint a

surveyor. Now, therefore, the Board of Trade, in pursuance of the powers vested in them, do hereby appoint C. D. of to be the surveyor to make a valuation of the interest in the said lands and hereditaments which the said A. B. is entitled or enabled to sell and convey, including the amount of compensation for all damage and injury (if any) to be sustained by reason of the exercise of the powers conferred by the 85th section of the Lands Clauses Consolidation Act, 1845, as far as such damage and injury are capable of estimation, and do direct the said C. D. to proceed in respect of such valuation in the manner prescribed in sects. 59—63 of the Lands Clauses Consolidation Act, 1845.

Signed by order of the Board of Trade, this day of .

No. XVIII.

DECLARATION of IMPARTIALITY *by a SURVEYOR appointed under Sect. 59 or Sect. 85 of the Lands Clauses Act, 1845.*

I, A. B., do solemnly and sincerely declare that I will faithfully, impartially, and honestly, according to the best of my skill and ability, execute the duty of making the valuation hereby referred to me (*a*).

A. B.

Made and subscribed in the presence of , Justice of the Peace for .

(*a*) *Vide ante*, p. 174.

No. XIX.

DECLARATION of CORRECTNESS of VALUATION *by a SURVEYOR appointed under Sect. 9, Sect. 59 or Sect. 85 of the Lands Clauses Act, 1845.*

I, the undersigned A. B., do hereby declare the foregoing valuation to be correct.

(Signed) A. B.

Dated this day of

No. XX.

VALUATION *by a* SURVEYOR.

Whereas I, the undersigned A. B., was, on the day of , duly appointed under the nomination annexed hereto to make a valuation of the amount of purchase-money or compensation to be paid to C. D. for his interest or the interest which he is enabled to sell under the [special] Act and the Acts incorporated therewith, in the lands and hereditaments described in the schedule thereto, and coloured red on the plan attached thereto, and of the amount of compensation to be paid for the damage (if any) to be sustained by the said C. D. by reason of the severing of the lands taken from his other lands, or otherwise injuriously affecting such other lands by the exercise of the powers of the [special] Act and the Acts incorporated therewith; and whereas before entering upon the duty of making such valuation I made the declaration of impartiality annexed hereto; Now I hereby determine the value of the interest which the said C. D. is enabled to sell under the said Acts in the said lands and hereditaments, and the amount of the said compensation, at the sum of £ .

Dated this day of

(Signed) A. B.

[Annex—

- (1.) Nomination of Surveyor (Precedents XIII., XIV., XV., XVII.).
- (2.) Declaration of Impartiality (Precedent XVIII.).
- (3.) Declaration of Correctness (Precedent XIX.).]

No. XXI.

CERTIFICATE of Two Justices that CAPITAL has been subscribed.

In pursuance of the [special] Act and sect. 17 of the Lands Clauses Consolidation Act, 1845, we, the undersigned A. B. and C. D., being two of his Majesty's justices assembled and acting together at , do certify, on the application of the Company, that the sum of £ , being the whole of the capital prescribed by the said [special] Act, has been subscribed under contract binding the parties thereto, their heirs, executors and

incorporated therewith, serve upon A. B. a notice requiring him to give up possession of certain lands and hereditaments [*insert description from notice*] and occupied by the said A. B. as a weekly tenant, and whereas no agreement has been made as to the amount of compensation for the value of the unexpired term or interest of the said A. B. in the said lands and hereditaments, and for any just allowance which ought to be made to him by an incoming tenant, and for any loss or injury he may sustain, and for the damage done to him in his tenancy by severing the lands held by him, or otherwise injuriously affecting the same, and whereas on the information of the said A. B. the said company were summoned to appear before us at the time and place therein mentioned; Now therefore we, the undersigned, being two of his Majesty's justices of the peace for the county of _____, assembled and acting together, having heard the evidence adduced by the said A. B. and the said company, do determine the sum of £ _____ to be the amount of the said compensation due to the said A. B.

Given under our hands this _____ day of _____.

(Signed) C. D.
E. F.

No. XXIV

NOTICE to Company requiring Apportionment of RENT.

Whereas certain lands [*copy parcels from lease*] are comprised in a lease dated the _____ day of _____, granted to me, the undersigned A. B., for a term of twenty-one years, whereof about seven years are still unexpired, at the rent of 100*l.* per annum, all which lands and hereditaments are delineated on the plan attached hereto, and thereon coloured red and black; and whereas you the _____ Company under the [special] Act and the Acts incorporated therewith, by a notice to treat dated the _____ day of _____, and duly served on me, require to purchase and take so much only of the said lands and hereditaments as are coloured red. Now therefore I give you the said company notice that I require an apportionment to be made of the said rent in accordance with the provisions of the said Acts.

Dated this _____ day of _____.
To the _____ Company.

(Signed) A. B.

No. XXV.

SUMMONS *to apportion RENT.*

To the Company and C. D. the lessor.

Whereas information hath this day been laid before me, one of his Majesty's justices of the peace for the county of , by A. B. that the Company in pursuance of the [special] Act and the Acts incorporated therewith by a notice to treat dated the day of and duly served on him, required to purchase and take a part only of certain lands [*copy parcels from lease*] included in a lease dated the day of , granted to him by C. D. of for a term of twenty-one years, whereof about ten years are still unexpired, at the rent of 100*l.* per annum, and that the apportionment of rent between the lands comprised in the said notice and the residue of the lands included in the said lease has not been settled by agreement; These are therefore to command you and each of you in his Majesty's name to be and appear on the day of at o'clock in the forenoon at before such two of his Majesty's justices of the peace as may then be there for the purpose of determining such apportionment in accordance with the provisions of the said Acts, and to give you and each of you notice that if you do not appear such apportionment will be made in your absence.

Given under my hand and seal this day of at the
Court.

(Signed) (L.S.)

No. XXVI.

APPORTIONMENT of RENT *by Two Justices.*

At the Petty Sessions for	}	Whereas certain lands [<i>copy par-</i>
the county of , holden		<i>cels from lease</i>] are comprised in
on the day of .		a lease dated the day of ,

granted to A. B. for a term of twenty-one years, whereof about eleven years are still unexpired, at the rent of 90*l.* per annum, all which lands and hereditaments are delineated on the plan attached hereto, and thereon coloured red and black; and whereas the Company under the [special] Act and the Acts incorporated there-

with are authorized and require to purchase so much only of the said lands and hereditaments as are coloured red on the annexed plan, and in respect thereof have served a notice to treat upon the said A. B.; and whereas it is necessary that an apportionment should be made of the said rent of 90*l.* between the part of the said lands and hereditaments required to be purchased by the said company and the residue of such lands and hereditaments, but no agreement has been come to; Now therefore we, the undersigned, being two of his Majesty's justices of the peace for the county of _____, assembled and acting together at _____, do in pursuance of sect. 119 of the Lands Clauses Consolidation Act, 1845, hereby apportion the said yearly rent of 90*l.* as follows, namely, the sum of 10*l.* shall be the yearly rent payable for that part of the said lands and hereditaments which are required by the said company and coloured red on the annexed plan, and the sum of 80*l.* shall be the yearly rent for the residue of the said lands and hereditaments.

Given under our hands and seals this _____ day of _____.
 (Signed) C. D. (L.S.)
 E. F. (L.S.)

No. XXVII.

CLAIMANT'S *Notice of Desire to have* COMPENSATION
settled by Arbitration under Sect. 23 of the Lands
Clauses Act, 1845.

To the _____ Company.

I, the undersigned A. B., having received from you a certain notice, dated the _____ day of _____, demanding from me the particulars of my estate and interest in certain lands and hereditaments therein mentioned, and of the claims made by me in respect thereof, do hereby send you the said particulars [Precedent V.], and give you notice that unless you are willing to agree to pay to me the said sum of £ _____, I desire to have the amount of purchase-money or compensation to be paid by you for my interest in the said lands and hereditaments and the amount of compensation for damage to be sustained by me by reason of the severing of the lands taken from my other lands, or otherwise injuriously affecting such other lands by the exercise of the powers of the [special] Act,

PRECEDENTS.

or the Acts incorporated therewith, settled by arbitration in the manner prescribed by the Lands Clauses Consolidation Act, 1845.

Dated this day of .

(Signed) A. B.

No. XXVIII.

DEMAND *for* ARBITRATION *when lands have been injuriously affected.*

To the Company.

Whereas I, A. B., of , have a leasehold interest [*or am owner in fee simple*] in certain lands and hereditaments described in the schedule hereto, and the said interest does not expire until [Michaelmas, 1933], having a term of [eleven] years yet unexpired; and whereas the said lands and hereditaments have been injuriously affected by the execution of your works in the manner following [*shortly describe the nature of the injury*], and I claim as compensation in respect of the said injury the sum of £ [some sum exceeding £50]. Now, therefore, I give you notice that, unless you are willing to pay the said sum of £ , and enter into a written agreement for that purpose within twenty-one days after the receipt of this notice, I desire to have the amount of the said compensation settled by arbitration in the manner provided in the Lands Clauses Consolidation Act, 1845.

(Signed) A. B.

SCHEDULE.

No. XXIX.

APPOINTMENT *of an* ARBITRATOR *by an* OWNER.

Whereas, under the provisions of the [special] Act, and of the Acts incorporated therewith, the Company have given notice to me, the undersigned [*here insert description of owner*], that they require for the purposes of their undertaking certain lands and hereditaments described in the said notice and in the schedule hereto; and whereas, before the said company had issued their warrant to summon a jury in respect of the said lands and here-

ditaments, I signified to them by notice in writing my desire to have the amount of compensation settled by arbitration: Now, therefore, I appoint A. B., of _____, to be arbitrator on my behalf, to determine the amount of purchase-money and compensation to be paid by the said company for my interest in the said lands and hereditaments, or the interest therein which I am enabled to sell and convey under the said Acts, and also the amount of damage (if any) to be sustained by me by reason of the severing of the lands taken from my other lands, or otherwise injuriously affecting such other lands by the exercise of the powers of the said Acts.

Dated this _____ day of _____

(Signed)

SCHEDULE.

No. XXX.

NOTICE *by* OWNER of Appointment of Arbitrator, and
Request to Company to appoint an Arbitrator.

To the _____ Company.

I, the undersigned A. B., hereby give you notice that I have by writing under my hand, on the _____ day of _____, appointed E. F., of _____, to be arbitrator on my behalf to determine the amount of purchase-money and compensation to be paid by you for my interest in the lands and hereditaments described in the schedule hereto, or the interest therein which I am enabled to sell and convey under the [special] Act and the Acts incorporated therewith, and also the amount of damage (if any) to be sustained by me by reason of the severing of the lands taken from my other lands, or otherwise injuriously affecting such other lands by the exercise of the powers of the said Acts.

And I hereby require you, within fourteen days from the date hereof, to appoint an arbitrator to act on your behalf in the said matters.

Dated this _____ day of _____ .

(Signed) A. B.

SCHEDULE.

said Company do hereby appoint G. H., of , to be the arbitrator on our behalf concerning the said matters.

Dated this day of .

(Signed) ,

Secretary to the Company.

No. XXXIII.

NOTICE *by* COMPANY *of Appointment of an*
ARBITRATOR, *and request to Owner to appoint an*
Arbitrator.

To A. B., the owner.

We the Company hereby give you notice that we have, by writing, on the day of , appointed E. F., of , to be arbitrator on our behalf to determine the amount of purchase-money and compensation to be paid by us for the interest which you claim to be entitled to or which you are enabled to sell by the [special] Act and the Acts incorporated therewith, in the lands and hereditaments described in the schedule hereto, and also the amount of damage (if any) to be sustained by you by reason of the severing of the lands taken from your other lands, or otherwise injuriously affecting such other lands by the exercise of the powers of the said Acts.

And we hereby require you, within fourteen days from the date hereof, to appoint an arbitrator to act on your behalf in the said matters.

Dated this day of .

(Signed) ,

Secretary to the said Company.

SCHEDULE.

No. XXXIV.

APPOINTMENT *of* ARBITRATOR *to act for both Parties*
under Sect. 25 of the Lands Clauses Act, 1845.

Whereas under the provisions of the [special] Act, and of the Acts incorporated therewith, the Company on the day of gave notice to me the undersigned [*here insert description*

of owner] that they required for the purposes of their undertaking certain lands and hereditaments described in the said notice and in the schedule hereto; and whereas before the said company had issued their warrant to a sheriff to summon a jury in respect of the said lands and hereditaments, I signified to them, by notice in writing, my desire to have the amount of compensation payable to me for my interest in the said lands and hereditaments settled by arbitration; and whereas by writing under my hand on the
 day of I appointed A. B., of , to be arbitrator on my behalf to determine the amount of purchase-money and compensation to be paid by the said company for my interest in the said lands and hereditaments, or the interest therein which I am enabled to sell and convey under the said Acts, and also the amount of damage (if any) to be sustained by me by reason of the severing of the land taken from my other lands, or otherwise injuriously affecting such other lands, by the exercise of the powers of the said Acts; and whereas on the
 day of I gave notice in writing to the said company of the said appointment, and requested them within fourteen days from the date thereof to appoint an arbitrator to act on their behalf in the said matters; and whereas fourteen days have elapsed since the time of the aforesaid request, and the said company have failed to appoint an arbitrator to act on their behalf. Now, therefore, in pursuance of the said Acts, I appoint the said A. B. to act both on my behalf and on behalf of the said company in the matters aforesaid.

Dated the day of .

(Signed) .

SCHEDULE.

No. XXXV.

APPOINTMENT of a SINGLE ARBITRATOR *by Agreement.*

Whereas under the provisions of the [special] Act, and of the Acts incorporated therewith, the Company, of the one part, and A. B., of , of the other part, have agreed to concur in the appointment of a single arbitrator to determine the amount of

purchase-money and compensation to be paid by the said company to the said A. B. for his interest in certain lands and hereditaments required by the said company for the purposes of their undertaking, and described in the schedule hereto; Now, therefore, we the said company, and I, the said A. B., do concur in appointing E. F., of , to be a single arbitrator to determine the amount of purchase-money and compensation to be paid by the said company for the interest of the said A. B. in the said lands and hereditaments, or the interest therein which the said A. B. is enabled to sell under the said Acts, and also the amount of damage (if any) to be sustained by the said A. B. by reason of the severing of the lands taken from the other lands of the said A. B., or otherwise injuriously affecting such other lands by the exercise of the powers of the said Acts.

Dated this day of .

(Signed) C. D.,
 Secretary of the said Company.
 A. B.

SCHEDULE.

No. XXXVI.

NOTICE *requiring* ARBITRATION *by* OWNER *dissatisfied* *with Valuation of a Surveyor under Sect. 58 of* *the Lands Clauses Act, 1845.*

Whereas you the Company, in consequence of your being unable to find me after diligent inquiry [*or in consequence of my absence from the kingdom*], caused the amount of purchase-money or compensation in respect of my interest, or the interest which under the [*special*] Act and the Acts incorporated therewith I was enabled to sell in certain lands and hereditaments required by you for the purposes of your undertaking, and described in the schedule hereto, and the amount of damage (if any) to be sustained by me by reason of the severing of the said lands from my other lands, or otherwise injuriously affecting such other lands by the exercise of the powers of the said Acts, to be determined by the valuation of a surveyor, and have deposited the amount of such valuation in

PRECEDENTS.

the Bank of England; and whereas I am dissatisfied with such valuation, I hereby give you notice that I require the question of such compensation to be submitted to arbitration.

Dated this day of .

(Signed) A. B.

SCHEDULE.

No. XXXVII.

APPOINTMENT of ARBITRATOR by OWNER *dissatisfied with Valuation of a Surveyor under Sect. 58 of the Lands Clauses Act, 1845.*

Whereas the Company, in consequence of their being unable to find me after diligent inquiry [*or in consequence of my absence from the kingdom*], caused the amount of purchase-money or compensation in respect of my interest, or the interest which under the [*special*] Act and the Acts incorporated therewith I was enabled to sell in certain lands and hereditaments required by them for the purposes of their undertaking, and described in the schedule hereto, and the amount of damage (if any) to be sustained by me by reason of the severing of the said lands from my other lands, or otherwise injuriously affecting such other lands by the exercise of the powers of the said Acts, to be determined by the valuation of a surveyor, and have deposited the amount of such valuation in the Bank of England; and whereas I am dissatisfied with such valuation, and have given due notice in writing to the said company requiring the question of such compensation to be submitted to arbitration; Now, therefore, I hereby appoint C. D. of as arbitrator on my behalf to determine whether the said amount so deposited as aforesaid by the said company is a sufficient sum, or whether any and what further sum ought to be paid or deposited by them.

Dated this day of .

(Signed) A. B.

SCHEDULE.

No. XXXVIII.

NOTICE to ARBITRATOR to proceed under Sect. 30 of
the *Lands Clauses Act*, 1845.

In the matter of an Arbitration between A. B., claimant, and
the Company.

To C. D., the arbitrator appointed to act on behalf of the said
company

Take notice that I, the undersigned A. B., require you to proceed in the matter of the said arbitration, and that if you for seven days from the receipt of this notice neglect to act, E. F., the arbitrator appointed on my behalf, will proceed *ex parte*, and that his decision will be as effectual as if he had been the single arbitrator appointed by me and the said company.

Dated this day of

(Signed) A. B.

No. XXXIX.

APPOINTMENT of UMPIRE by ARBITRATORS.

Whereas the undersigned A. B. was on the day of
appointed arbitrator on behalf of C. D., and the undersigned E. F.
was on the day of appointed arbitrator on behalf of
the Company, to determine the amount of purchase-money
and compensation to be paid by the said company for the interest
to which the said C. D. is entitled or which he is enabled to sell
under the [special] Act and the Acts incorporated therewith, in the
lands and hereditaments described in the said appointments, and
also the amount of damage (if any) to be sustained by the said
C. D. by reason of the severing of the lands taken from the other
lands of the said C. D., or otherwise injuriously affecting such
other lands by the exercise of the powers of the said Acts; Now,
therefore, we, before entering upon the matters referred to us,
nominate and appoint G. H. to be umpire to decide on any matters
on which we shall differ or which shall be referred to him under
the said Acts.

Witness our hands this day of

(Signed) A. B.
 E. F.

No. XL.

NOTICE *by Arbitrators to UMPIRE of Failure to agree.*

To A. B.

We, the undersigned C. D. and E. F., give you notice that we are unable to agree in respect of the matters referred to us by G. H. of and the Company, and that the determination of the said matters has devolved upon you as umpire under your appointment of the day of .

Dated this day of

(Signed) C. D.

E. F.

No. XLI.

APPOINTMENT *of an UMPIRE by Board of Trade (a).*

[*The same form is applicable to the appointment of an umpire by two justices.*]

Whereas application has been made to the Board of Trade by the Company under the [special] Act, and the Acts incorporated therewith, to appoint an umpire; and whereas it has been made to appear to the said Board that the arbitrators appointed by the said company and A. B. to determine the amount of purchase-money and compensation to be paid by the said company for the interest to which the said A. B. is entitled, or which he is enabled to sell under the said Acts, in the lands and hereditaments described in the schedule hereto, and also the amount of damage (if any) to be sustained by the said A. B. by reason of the severing of the lands taken from the other lands of the said A. B., or otherwise injuriously affecting such lands by the exercise of the powers of the said Acts, have refused [*or have for seven days after request from the said company neglected*] to appoint an umpire; Now, therefore, the said Board do hereby appoint C. D. to be the umpire to decide on any matters on which the said arbitrators shall differ, or which shall be referred to him under the provisions of the said Acts.

(Signed)

Secretary to the Board of Trade.

SCHEDULE.

(a) See *ante*, p. 192; Lands Clauses (Umpire) Act, 1883, s. 1 (*ante*, p. 439).

(Signed) A. B.
C. D.

Whereas on the day of the Company gave notice to E. F. that, in pursuance of the powers of the [special] Act and the Acts incorporated therewith, they required to purchase and take certain lands and hereditaments [*insert description from notice*]; and whereas the said E. F. claimed to be interested in the said lands and hereditaments under a lease for years dated the day of , of which a term of about eleven years was then unexpired; and whereas the said company and the said E. F. failed to agree as to the amount of purchase-money and compensation to be paid by the said company for the interest claimed by the said E. F. in the said lands and hereditaments; and also the amount of damage (if any) to be sustained by him by reason of the severing of the lands taken from his other lands, or

PRECEDENTS.

otherwise injuriously affecting such other lands by the exercise of the powers of the said Acts; and whereas the said company on the day of appointed by writing under the hand of their secretary the said A. B. as arbitrator to act on their behalf in the determination of the amount of the said purchase-money and compensation; and whereas the said E. F. on the day of appointed by writing under his hand the said C. D. as arbitrator to act on his behalf in the determination of the amount of the said purchase-money and compensation; and whereas we the said arbitrators before entering upon the consideration of the matters referred to us duly appointed an umpire and made and subscribed the declaration required by the said Acts. Now know ye that we, the said arbitrators, having viewed the said lands and hereditaments, and having considered the evidence adduced by the respective parties, do award and determine that the sum of £ is the amount of purchase-money and compensation to be paid by the said company for the interest claimed by the said E. F. in the said land and hereditaments, and that the said sum includes an amount for all damage sustained or to be sustained by the said E. F. by reason of the severing of the lands taken from his other lands or otherwise injuriously affecting such other lands by the exercise of the powers of the said Acts.

Witness our hands this day of .

(Signed) A. B.
 C. D.

SCHEDULE.

No. XLV

AWARD of COMPENSATION (*including Mines*) by an
Umpire.

To all to whom these presents shall come I, A. B., send greeting:

Whereas on the day of the Company gave notice to E. F. that in pursuance of the powers of the [special] Act and the Acts incorporated therewith, they required to purchase and take for the purposes of their undertaking certain lands and hereditaments, and the mines and minerals situate thereunder [*insert description from notice*]; and whereas under the said Acts the said E. F. claims to be enabled to sell the said lands and

hereditaments and mines and minerals and the fee simple and inheritance thereof in possession; and whereas the said company and the said E. F. have failed to agree as to the amount of purchase-money and compensation to be paid to the said E. F. by the said company for the interest in the said lands and hereditaments, and mines and minerals which he claims to be enabled to sell under the said Acts, and also the amount of damage (if any) to be sustained by him by reason of the severing of the lands, mines and minerals taken from his other lands, mines and minerals, or otherwise injuriously affecting such other lands, mines and minerals by the exercise of the powers of the said Acts; and whereas the said company on the day of appointed by writing under the hand of their secretary C. D. of as arbitrator to act on their behalf in the determination of the amount of the said purchase-money and compensation; and whereas the said E. F. on the day of appointed by writing under his hand G. H. of as arbitrator to act on his behalf in the determination of the amount of the said purchase-money and compensation; and whereas the said C. D. and G. H., before entering upon the consideration of the matters referred to them, did, on the day of , by writing under their hands, duly nominate and appoint me to be the umpire to decide on any matters referred to them as to which they should differ; and whereas the said arbitrators differed respecting the matters referred to them: Now know ye that I, having made the declaration required by the said Acts, and having viewed the said lands and hereditaments, and having considered the evidence adduced by the respective parties, do award and determine that the sum of £ is the amount of purchase-money and compensation to be paid by the said company for the interest in the said lands and hereditaments and mines and minerals which the said E. F. claims to be enabled to sell under the said Acts, and that the said sum includes an amount for all damages sustained by the said E. F. by reason of the severing of the lands, mines and minerals taken from his other lands, mines and minerals, or otherwise injuriously affecting such other lands, mines and minerals by the exercise of the powers of the said Acts.

Witness my hand this day of .

(Signed) A. B.

SCHEDULE.

No. XLVI.

AWARD of UMPIRE in the Form of a SPECIAL CASE.

[*The same recitals should be inserted as in the last Precedent, and then as follows:—*]

Now know ye, that I, having made the declaration required by the said Acts, and having viewed the said lands and hereditaments, and having considered the evidence brought before me by the respective parties, hereby state my award of and concerning the matters so referred to me in the form of a special case for the opinion of the King's Bench Division of the High Court of Justice.

[*Here state case according to facts. Conclude:—*]

If the court shall be of opinion that the said E. F. is entitled to compensation in respect of the matters stated in paragraphs , I award and determine that the sum of £ is the amount to be paid by the said company in respect of the matters referred to me; but if the court shall be of opinion that the said E. F. is not entitled to compensation in respect of the said matters, then I award and determine that the sum of £ is the amount to be paid by the said company in respect of the matters referred to me.

Witness my hand this day of

(Signed) A. B.

SCHEDULE.

No. XLVII.

NOTICE of Intention to issue Warrant for summoning a Jury, and Offer of Compensation.

To A. B., of &c.

In pursuance of the provisions of the [special] Act and the Acts incorporated therewith, the Company give you notice that they intend, after the expiration of ten days from the service of this notice, to issue their warrant to the sheriff or other the proper officer of the county of to summon a [special] jury to determine the value of the interest claimed by you or which you are under the said Acts enabled to sell or convey in certain lands and hereditaments required by the said company for the purposes

of their undertaking, and described in a certain notice served upon you by the said company on the day of and also the amount of compensation for the damage (if any) sustained or to be sustained by you by reason of the severing of the said lands and hereditaments from your other lands, or otherwise injuriously affecting such other lands by the exercise of the powers of the said Acts, and the said company hereby further give you notice that they offer you the sum of £ as full compensation for the value of the interest claimed by you, or which you are under the said Acts enabled to convey in the said lands and hereditaments, and for all damage to be sustained by you by reason of the severing of the said lands and hereditaments from your other lands, or otherwise injuriously affecting such other lands by the exercise of the powers of the said Acts.

Dated this day of .

(Signed) C. D.,

Secretary of the said company.

No. XLVIII.

WARRANT to SHERIFF to SUMMON JURY to determine
the Value of Lands required to be purchased or
taken.

[*Special Act.*]

To , Sheriff of [the county of].

Whereas, in pursuance of the provisions contained in the [special] Act and the Acts incorporated therewith, the Company on the day of duly served notice on A. B. of , that they required to purchase and take for the purposes of their undertaking certain lands and hereditaments [*insert description from notice to treat*]; and whereas the said A. B. claims to be interested in the said lands and hereditaments under a lease thereof for a term of years commencing from the day of ; and whereas the said A. B. and the said company have been unable to agree as to the amount of purchase-money and compensation to be paid by the said company to the said A. B. for his estate and interest in the said lands and hereditaments, and as to the amount of compensation for the damage, if any, sustained or to be sustained by the said A. B. by reason of the severing of

the said lands and hereditaments from the other lands of the said A. B., or otherwise injuriously affecting such other lands by the exercise of the powers of the said Acts; and whereas the said company on the day of , being more than ten days before the date hereof, did serve on the said A. B. a notice of their intention to issue their warrant for summoning a [special] jury to determine the amount of such purchase-money and compensation as aforesaid; Now, therefore, the said company do by this warrant issued under their common seal to you, the sheriff of the said county, require you to summon a jury [or to nominate and strike a special jury] in accordance with the provisions of the said Acts, to determine by their verdict the amount of purchase-money and compensation to be paid to the said A. B. by the said company for the purchase of his estate and interest in the said lands and hereditaments, and also the amount of money to be paid by way of compensation for the damage, if any, sustained or to be sustained by the said A. B. by reason of the severing of the said lands and hereditaments from the other lands of the said A. B., or otherwise injuriously affecting such other lands by the exercise of the powers of the said Acts.

Given under the common seal of the Company this
day of

(Seal.)

NOTE.—This form of warrant is shorter than that usually employed. It contains all that is essential, and omits controversial points, such as a statement of the fact of an offer having been made or its amount: *vide ante*, p. 215.

No. XLIX.

OWNER'S NOTICE *under Sect. 68 of the Lands Clauses Act, 1845, requiring the Company to issue their Warrant to summon a Jury.*

To the Company.

Whereas I, A. B., of , am owner in fee simple of the lands and hereditaments described in the schedule hereto, and hold the same in possession, and whereas in the execution of the works authorized by the [special] Act and the Acts incorporated therewith you have injuriously affected the said lands and hereditaments in the manner following [*shortly describe the nature of the*

injury]: Now I, the said A. B., claim as compensation in respect of the said injury the sum of £ , and I further give you notice that unless you are willing to pay the amount of compensation claimed, and enter into a written agreement for that purpose within twenty-one days after the receipt hereof, I require the question of compensation to be settled by a jury, and that you shall within the time aforesaid issue your warrant to the sheriff of to summon a jury to settle the amount of the said compensation in the manner provided in the Lands Clauses Consolidation Act, 1845.

Witness my hand this day of

(Signed) .

SCHEDULE.

No. L.

WARRANT to SHERIFF *where an Owner has given Notice that his Interest in Lands has been injuriously affected.*

[*Special Act.*]

Whereas A. B., of , did on the day of serve on the Company a notice alleging that his interest in certain lands and hereditaments [*insert description from notice*] had been injuriously affected by the execution of the works authorized under the [special] Act and the Acts incorporated therewith, and claiming that the amount of compensation should be settled by a jury; and whereas we are willing to issue our warrant for summoning a jury under protest, and not admitting that the said A. B. has any claim for compensation under the said Acts; Now, therefore, the said company do, by this warrant issued under their common seal to you the sheriff of the county of , require you to nominate and strike a special jury in accordance with the provisions of the said Acts for the purpose of settling the amount of compensation (if any) to be paid to the said A. B. for the damage (if any) sustained by him by reason of his interest in the said lands and hereditaments having been injuriously affected by the execution of the works authorized by the said Acts.

Given under the common seal of the Company this
day of .

(Seal.)

No. LI.

NOTICE from SHERIFF of *Time and Place for Nomination of a Special Jury.*

In the matter of the claim of A. B. against the Company.

I hereby give you notice that I have appointed o'clock in the forenoon of the day of , at my office at , situated in the county of , as the time and place of nominating and striking a special jury in the above matter, and that I summon you to appear before me at the time and place above mentioned by yourself or your agent.

Dated this day of .

(Signature)

NOTE.—This notice must be sent both to the owner and to the company.

No. LII.

NOTICE from SHERIFF of *Time and Place for Reduction of a Special Jury.*

In the matter of the claim of A. B. against the Company.

I hereby give you notice that I have appointed o'clock in the forenoon of the day of , at my office at , situated in the county of , as the time and place for you or your agent to appear before me, to reduce the number of the special jury in the above matter.

Dated this day of .

(Signature)

NOTE.—This notice must be sent both to the owner and to the company.

No. LIII.

NOTICE *from the SHERIFF to the COMPANY of Time and Place of holding* INQUIRY.

Whereas by a warrant directed to me under your seal on the
 day of , I was required to nominate and strike a
 special jury [*or to summon a jury*] for the purpose of determining
 the amount of purchase-money and compensation to be paid by you
 in respect of the estate and interest of A. B. in the lands and
 hereditaments therein described. Now, therefore, I give you notice
 that the inquiry in pursuance of the said warrant will be held at
 o'clock in the forenoon of the day of at .
 Dated this day of .

(Signed) ,
 Sheriff.

No. LIV.

NOTICE *by COMPANY to OWNER of Time and Place for holding an* INQUIRY *before a Jury.*

To A. B., of &c.

Whereas the Company on the day of gave
 you notice of their intention to issue their warrant to the sheriff of
 the county of , to summon a jury to determine the value of
 the estate and interest to which you claimed to be entitled, or which
 you are enabled under the [special] Act and the Acts incorporated
 therewith, to sell and convey in the lands and hereditaments
 therein described, and also the amount of compensation for the
 damage (if any) sustained or to be sustained by you by reason of
 the severing of the said lands and hereditaments from your other
 lands, or otherwise injuriously affecting such other lands by the
 exercise of the powers of the said Acts: Now, therefore, the said
 company hereby give you notice that the inquiry before a jury for
 the determination of the amount of the said purchase-money and
 compensation will be held at o'clock in the forenoon of the
 day of at .
 Dated this day of .

(Signed) C. D.,
 Secretary to the said company.

No. LV.

INQUISITION, VERDICT *and Judgment.*

[*The name of the county*], to wit. { An inquisition, verdict and judgment had and taken pursuant to the [special] Act, and the Acts incorporated therewith, at _____, not being more than eight miles distant from the lands and hereditaments hereinafter mentioned, on the _____ day of _____, before me _____, sheriff of the said county, by virtue of a warrant issued under the seal of the _____ Company, and received by me on the _____ day of _____ on the oaths of [*insert names of jury*], indifferent persons duly qualified to act as special jurymen in the High Court of Justice, and sworn to inquire of and concerning the matters mentioned in the said warrant hereunto annexed; A. B. in the said warrant named, and the said company, having appeared before me and the jurors aforesaid at the time and place above mentioned by their respective counsel, solicitors, and agents, the said jurors, on their oaths, say that they do assess and give a verdict for the sum of £ _____, for the purchase by the said company of the estate and interest of the said A. B. in the lands and hereditaments described in the said warrant hereunto annexed [and the said jurors do further, on their oaths, say that they do assess and give a verdict for the sum of £ _____, by way of compensation to the said A. B. for the damage to be sustained by him by reason of the severing of the lands taken from the other lands of the said A. B., or otherwise injuriously affecting such other lands by the exercise of the powers of the said Acts]. And I, the said sheriff, do order the said sum[s of £ _____ and] of £ _____ to be paid by the said company

In witness whereof I have hereunto set my hand and seal, and the said jurors have hereunto set their hands and seals, the day and year first above written.

NOTE.—In practice it is often agreed that the jury shall give a verdict in one sum, to include both purchase-money and compensation, or there may be no question of injuriously affecting, in which case the words in brackets should be omitted.

No. LVI.

DEED POLL *under Sect. 77 of the Lands Clauses Act, 1845, vesting Lands in COMPANY on failure of Owner to make a good Title.*

To all to whom these presents shall come we, the Company,
send greeting:

Whereas under and by virtue of the [special] Act, and the Acts incorporated therewith, the Company were empowered and authorised to purchase and take for the purposes of their undertaking among others the lands mentioned in the schedule hereto; and whereas A. B. of , was or claimed to be seised of the said lands in fee simple in possession or to be otherwise entitled to or enabled to sell the same to the company under the powers contained in the said Acts; and whereas by a notice in writing, dated the day of , and addressed to the said A. B., the company duly gave him notice that in pursuance of the powers contained in the said Acts they required to purchase and take the said lands for the purposes of their undertaking; and whereas failing agreement the sum of £ has been found and determined as between the company and the said A. B. by the verdict of a jury, pursuant to the provisions of the said Acts, as the amount of purchase-money and compensation to be paid by the company to the said A. B. for the fee simple in possession of the said lands and for the damage sustained by the said A. B. by the severing of the lands taken from his other lands, or otherwise injuriously affecting such other lands by the exercise of the powers of the said Acts; and whereas the company duly applied to the said A. B. to make out a title to the said lands to the satisfaction of the company, but the said A. B. has wholly neglected and failed to make out such title or any title whatever to the said lands, and has wholly refused to convey the same to the company; and whereas the company thereupon, pursuant to the provisions of the said Acts, have paid the said sum of £ into the Bank of England in the name and with the privity of his Majesty's Paymaster-General to his account there to the credit of the said A. B., as appears by the receipt in writing, dated the day of , of the cashier of the said bank; Now these presents witness that in pursuance of the powers conferred by the said Acts they, the said Company, to the intent to vest in themselves and their successors and assigns absolutely the fee simple and inheritance of and in the said lands free from incum-

brances, Do by this Deed Poll executed by and under their common seal, and stamped with the stamp duty which would have been payable upon a conveyance to them of the said lands, declare that the said Company have purchased and taken the said lands; and that A. B. is the person from whom the same have been purchased and taken; and that the sum of £ has been deposited in the Bank of England in respect thereof to the credit of the said A. B.

In witness whereof the said company have hereunto attached their common seal the day of

(L. s.)

SCHEDULE.

NOTE.—A similar form may be used under sects. 97, 100, 107, 109, 111, 113, 117.

No. LVII.

BOND entered into with SURETIES under Sect. 85 of the Lands Clauses Act, 1845.

Know all men by these presents that we the Company, and A. B. and C. D., being sureties duly approved in accordance with the provisions of sect. 85 of the Lands Clauses Consolidation Act, 1845 [and of the Railway Companies Act, 1867, s. 36], are jointly and severally held and firmly bound to E. F. in the sum of £ to be paid to the said E. F., or his certain attorney, executors, administrators or assigns, for which payment to be well and truly made we the said company bind ourselves and our successors, and we the said A. B. and C. D. bind ourselves and each of us and our respective heirs, executors and administrators by these presents. Sealed with the common seal of us the said company, and with the respective seals of us the said A. B. and C. D.

Dated this day of .

Whereas the said company in pursuance of the powers of the [special] Act, and the Acts incorporated therewith, on the day of gave notice to the said E. F. that they required to purchase and take certain lands and hereditaments particularly described in the schedule hereto; and whereas no agreement has been come to or award made or verdict given for the purchase-money or compensation to be paid to the said E. F. in respect

of his estate and interest in the said lands and hereditaments, and the said company are desirous of entering upon and using the said lands and hereditaments before the purchase-money or compensation payable by them has been agreed upon or settled, but the said E. F. refuses to consent thereto; and whereas a surveyor duly appointed by two justices under sect. 85 of the Lands Clauses Consolidation Act, 1845 [or by the Board of Trade under sect. 36 of the Railway Companies Act, 1867], has determined the amount of purchase-money or compensation to be paid to the said E. F. in respect of the estate and interest which he claims to be enabled to sell under the said Acts at the sum of £ ; and whereas, in compliance with the said Acts and sect. 85 of the Lands Clauses Consolidation Act, 1845, the said company have deposited in the Bank of England by way of security the said sum of £ in the name and with the privity of the Paymaster-General, to be placed to his account there for and on behalf of the Supreme Court of Judicature in England to the credit of the said E. F.; Now, therefore, the condition of the above-written bond is such that if the said company or the said A. B. or C. D. shall pay to the said E. F., or deposit in the Bank of England for the benefit of the parties interested in the said lands and hereditaments, as the case may require, under the provisions contained in the Lands Clauses Consolidation Act, 1845, all such purchase-money or compensation as may in manner in the same Act provided be determined to be payable by the said company in respect of the said lands and hereditaments, together with interest thereon at the rate of £5 per cent. per annum from the time of entering on the said lands and hereditaments until such purchase-money or compensation shall be paid to the said E. F. or deposited in the Bank of England for the benefit of the parties interested in the said lands and hereditaments under the provisions contained in the Lands Clauses Consolidation Act, 1845; then the above-written bond to be void, otherwise the same to remain in full force.

Sealed with the common seal
 of the said company, and
 by the said A. B. and C. D.,
 in the presence of

(L. S.)

SCHEDULE.

No. LVIII.

OFFER of *the* RIGHT of PRE-EMPTION OF SUPERFLUOUS
LANDS.

To A. B., of &c.

The Company having acquired the lands delineated on the plan attached hereto and thereon coloured red under the powers of the [special] Act and the Acts incorporated therewith, and not requiring the same for the purposes thereof, hereby offer to sell the same to you as being the person entitled to the lands from which the same were originally severed, and further give you notice that unless within six weeks of this offer you signify to the said company your desire to purchase the same, the right of pre-emption hereby offered to you will cease and determine.

Dated this day of .

(Signed) C. D.,

Secretary to the Company.

No. LIX.

NOTICE *to produce.*

To A. B., of &c.

Take notice that you are hereby required to produce at the inquiry which has been appointed to be held on the day of at , all and every of your grants, leases, agreements for leases, valuations, receipts for rent, rates and taxes, books, books of account, and accounts of rents received, and other evidence, papers, and writings whatsoever relating to the lands and hereditaments, the subject of your claim, together with all letters and copies of letters (except such as have been received without prejudice) relating to your claim, and particularly all banker's pass books, statements and invoices, ledgers, wages books, day books and stock books, and all other books, documents, or writings in any way connected with the business carried on by you upon the said lands and hereditaments.

Dated this day of .

(Signed) G. H.,

Solicitor to the said Company.

No. LX.

NOTICE *to admit.*

To the Company and to C. D., their solicitor.

Take notice that A. B. proposes to adduce in evidence at the inquiry which has been appointed to be held on the day of , at , the several documents hereunder specified, and that the same may be inspected by the Company, their solicitor or agent, at , on , between the hours of , and the

 Company are hereby required, within hours from the last-mentioned hour, to admit that such of the said documents as are specified to be originals were respectively written, signed, or executed as they purport respectively to have been; that such as are specified as copies are true copies, and that such documents as are stated to have been served, sent, or delivered were so served, sent, or delivered respectively, saving all just exceptions to the admissibility of all such documents in evidence.

Dated this day of .

(Signed) G. H.,
Solicitor to A. B.

ORIGINALS.

Description of Document.	Dates.

COPIES.

Description of Document.	Dates.	Original or Duplicate served, sent, or delivered, when, how, and by whom.

INDEX.

A.

ABANDONMENT,

- of notice to treat, when owner serves counter-notice, 42, 80.
 - by commissioners acting for executive, 80.
- of undertaking, rights of landowners on, 63, 383.
 - how operation of superfluous lands clauses affected by, 304.
- of proposed reinvestment of deposit, costs on, 279.
- of railways, 383.

ABSENT OWNER,

- assessment of compensation to, by a surveyor, 70, 174.
 - by jury if title is doubtful, 175.
- deposit of amount, 70, 175.
- execution of deed-poll by and vesting of lands in promoters, 176, 269.
- sufficiency of valuation by surveyor may be submitted to arbitration, 175, 186, 237.
 - costs in such a case, 175, 187.
- further sum awarded to be deposited within 14 days, 175, 187.
 - enforced by attachment or recovered by action, 175, 187.
- in case of superfluous lands, 313.

ABSOLUTELY ENTITLED,

- conveyance by owner, 244. *See* CONVEYANCE.
- payment out of deposit to party, 256.
 - means "entitled to his own use," 256.
- trustees with absolute power of sale are, 256.
 - of a charity are in some cases, 257.
- local authority, 257.
- public company is, 258.
- dowress is, 258.
- married woman may be, 258.
- tenant for life to some extent is, 258.
- tenant in tail, how far, is, 259.
- party, may elect to have deposit reinvested at cost of promoters, 259.

ACCESS,

- to works, land for, may be taken, 29.
- accommodation works only include access necessary to lands for their present user, 127.
 - additional access is a question for compensation, 127.
- compensation for interference with private right of access, 152.
 - with right of access to public highway, 155.

ACCOMMODATION WORKS,

- when promoters may take lands for, 29.
- specific performance in case of, 58.
- where lands severed, may be ordered by justices, 127.
- cannot be ordered by assessing tribunal, 224.
- under Metropolis Management Acts, 349.

ACQUISITION OF LAND (ASSESSMENT OF COMPENSATION) ACT, 1919. *See* APPENDIX, 478.

- scope of, 319, 330.
- acquisition must be compulsory, 319.
- official arbitrators under, 320.
- reference committee, 320.
- rules for assessment of compensation, 321.
 - no allowance for compulsory acquisition, 322.
 - value in open market, 322.
 - limitation as to this rule, 325.
 - special adaptability, 322.
 - when to be taken into account, 323.
 - where no general market, 324.
 - increased value by use of premises, 324.
 - reinstatement, 325.
- procedure before official arbitrator, 325.
 - consolidation of proceedings, 326.
- costs, 326, 327.
- notice of claim, 326, 328.
- unconditional offer of acceptance, 327, 328.
- withdrawal of notice to treat, 328.
- finality of award, 329.
- statement of special case, 329.
- effect of, on existing enactments, 329, 354, 370.
- reference to Commissioners of Inland Revenue, 331.
- agreed arbitrator under, 331.
- certificate of value by official arbitrator, 332.

ACQUISITION OF LAND (ASSESSMENT OF COMPENSATION) RULES, 1919. *See* APPENDIX, 484.ACQUISITION OF LAND BY THE CROWN, 334. *See* EMERGENCY.ACTION. *See* INJUNCTION—MANDAMUS—RECOVERY OF LAND—SPECIFIC PERFORMANCE.

- for payment of amount awarded by arbitrator after surveyor's valuation, 175, 187.
- for payment of amount claimed on default in issuing warrant for jury after entry, 208, 231.
 - defences to such action, 231.
- for payment of compensation for injury to lands, 233, 234.
 - defences to such action, 234.
- to determine amount of compensation, by railway companies, 219.
- against owner for working mines, 129.
- for payment of costs, 203, 218.
 - maintainable before taxation, 203, 218.
- for damage caused by acts in excess or wanton use of statutory powers, 151, 162.
- to enforce right of pre-emption, 311.
- for disturbance of commonable rights, 293.

ADAPTABILITY, SPECIAL, 111, 322.

ADJOINING LANDS. *See* INTERSECTED LANDS.

entry on, by railway company for temporary purpose, 33.
to superfluous lands, what are, 310.

ADJOINING OWNERS,

vesting of superfluous lands in, 309.
is absolute and automatic, 310.
definition of, 310.
include lessees and owners of limited interests, 310.
division of lands among, 311.
right of pre-emption in, 311.
time at which it arises, 311.
time within which it must be claimed, 311.
none of lands in a town or built upon or used for building
purposes, 312, 313.
form of decree on claim of pre-emption by, 312.

ADMINISTRATORS,

powers of, to convey, 50.
restricted meaning of, 51.

ADMIRALTY, acquisition of land for, 380.

ADVERSE POSSESSION, 138, 306.

AFFIDAVIT,

sufficiency of statement in, that lands are required, 30.
on application for certiorari, 240.
on application for payment of corpus or income of deposit, 252.
one of several applicants may make, 253.

AGENT, form for appointment of, by company, 54.

AGREEMENT,

incorporation of, in a special Act, 25, 319.
purchase of lands by, 53.
form of, 53.
under sect. 97 of Companies Clauses Act, 1845...53.
under seal, 54.
by urban authority, 54.
adoption or part performance of a contract, 54.
appointment of agent, 54.
ratification by company of contract by promoters, 55.
notice to treat as a preliminary to, 55.
contract complete, when price fixed after notice to treat, 56.
protection of owners under disability selling by agreement,
57.
valuation to be made by two surveyors, 58, 173. *See* SUR-
VEYORS.
provisions of sect. 9 may not be waived, 58.
when municipal corporations must get consent of Ministry
of Health, 59.
trustees of a charity may require consent of Charity Com-
missioners, 59.

AGREEMENT—*continued.*

- how, enforced,
 - specific performance, 59.
 - in case of accommodation works, 59.
 - after entry, owner has remedies of unpaid vendor, 61, 231.
 - injunction against use of land not granted, 61.
 - unless land unsaleable, 62.
- for sale of land in consideration of annual rent-charge, 62.
 - such rents are a charge on the tolls and rates, 62.
 - form of declaration of charge, 63.
- for lease may be equivalent to lease, 178.

AGRICULTURE,

- acquisition of land for, 370.
- Small Holdings and Allotments Act, 1908...370.
 - effect of Acquisition of Land Act, 1919, upon, 330, 370.
 - valuer, 330.
 - power to acquire land, 371.
 - compulsory hiring, 372.
 - matters for arbitrator's determination, 373.
 - how rent fixed, 373.
 - easements, 374.
 - withdrawal of notice to treat, 374.
 - limited owners, 374.
 - exempted lands, 374.
 - resumption by owner, 374.
 - compensation for improvements, 375.
 - superfluous lands, 375.

ALIENATION OF LANDS,

- promoters cannot alienate except for purposes of special act, 304.
 - except in case of lands purchased for extraordinary purposes, 305.
 - or superfluous lands, 305. *See* SUPERFLUOUS LANDS.

ALLOTMENTS. *See* AGRICULTURE.

ALLOWANCE FOR COMPULSORY ACQUISITION,

- under L. Cl. Acts, 141.
- not under Acquisition of Land Act, 1919...322.

AMBIGUITY, construction of acts in case of, 24, 25.

ANCIENT LIGHTS,

- compensation for interference with, 12, 153.
- no injunction for interference with, 12, 92.
- notice to treat not required, 12.

ANCIENT MONUMENTS,

- protection of, from acquisition under Housing Acts, 366.
 - Small Holdings, &c. Act, 374.

ANNUITANT,

- with charge on surface buildings is entitled to notice to treat, 75.
- cannot petition for application of deposit under sects. 69—71... 252.
- secured on leaseholds is entitled to his annuity in full, 269.

APPLICATION OF PURCHASE MONEY. *See* DEPOSIT.

APPORTIONMENT,

- of rent of copyholds, 288.
- of compensation among commoners, 291.
- of rent-charges, 297.
- of rent of lands subject to lease, 298.
- costs of, 299.
 - not payable by promoters on conveyance under sect. 82... 246.
 - payable by promoters under sect. 80...277, 298.
- of betterment charges, 362.

APPROVAL OF SURETIES,

- by two justices, 100.
- in case of railways by Board of Trade, 100, 383.

AQUEDUCT, power to make, does not give power to obtain supply of water, 29.**ARBITRATION,** 185. *See* **ARBITRATOR—AWARD, &c.**

- as to intersected lands, 34.
- in case of entry upon lands before purchase, 103.
- now under Arbitration Act, 1889...187.
- when claims assessed by, 185.
 - if claim exceeds 50*l.* and lands taken are held on tenancy greater than from year to year, 185.
 - notice for arbitration, time for, 185.
 - contents of, 185.
- if absent owner dissatisfied with valuation of surveyor, 175, 186, 237.
 - sum awarded must be deposited within fourteen days, 175, 187.
- in case of injuriously affecting, 187.
- in case of pre-emption of superfluous lands, 188, 313.
 - not an arbitration within sects. 25—37, L. Cl. Act, 1845 ...188, 313.
- by consent, 187.
- who may be appointed arbitrator, 188.
- how arbitrators appointed, 189.
- appointment to be delivered to arbitrator, 190.
 - is not revocable, 191.
 - is a submission to arbitration, 190, 191.
 - when revocable, 190.
- declaration of impartiality by arbitrator or umpire, 189, 325.
 - to be annexed to award, 189.
- death or incapacity of arbitrator or refusal to act, 191.
- appointment of umpire, 192.
 - time for, 192.
- power of arbitrators and umpire over proceedings, 193.
- jurisdiction of arbitrators or umpire. *See* **ASSESSING TRIBUNAL.**
- award. *See* **AWARD.**
- in case of failure compensation must be assessed by a jury, 200.
- costs of arbitration under L. Cl. Acts, 200. *See* **OFFER—COSTS.**
 - after valuation by surveyor, 175, 187.
 - in case of pre-emption, 188, 313.
 - rules as to, 200.
 - if claims separable, costs may be dealt with separately, 202.
 - need not be included in the award, 202.
 - may be settled subsequently, 202.
 - taxation of, 202.

ARBITRATION—*continued*.

costs of arbitration under L. Cl. Acts—*continued*.

action to enforce payment of, 203.

order for taxation in, 203.

claim to, does not depend on validity of title, 203.

secus, in case of lands injuriously affected, 204.

owner has no lien for costs, 204.

under Public Health Acts, 344

Acquisition of Land Act, 1919...320, 331.

Metropolis Local Management Acts, 348.

Metropolis Management Amendment Act, 1879...353.

Housing Acts, Part I., 360.

Telegraph Acts, 379.

ARBITRATION ACT, 1889. *See* APPENDIX, 472.

ARBITRATOR. *See* ARBITRATION—AWARD—OFFICIAL ARBITRATOR—SPECIAL CASE.

who may be appointed, 188.

misconduct of, 189.

jurisdiction of. *See* ASSESSING TRIBUNAL.

when restrained by injunction, 188.

control of, over proceedings, 193.

power to state a special case, 194, 235, 243.

declaration of impartiality by, 189.

misdemeanor to act contrary to, 189.

if arbitrator is interested or misconducts himself, award may be set aside, 189, 241.

or arbitrator removed, 189.

not liable for negligence, 199.

should not consult solicitor of one of the parties, 196.

how far evidence of, admissible, 199, 236.

payment of, 198.

has a lien for remuneration, 198.

if owner takes up award, he cannot recover from promoters sums paid to, 198.

costs of, should be dealt with in award, 198.

mistake of, no defence to action to enforce award, 235.

agreed, under Acquisition of Land Act, 1919...331.

under Public Health Acts, 344.

under Metropolis Local Management Acts, 348.

standing, under Metropolis Management Act, 1879...353.

under Housing Acts, Part I., 358.

Ministry of Health acting as, 368.

under Small Holdings, &c. Act, 1908...373.

stipendiary magistrate acting as, under Telegraph Acts, 379.

County Court judge acting as, under Telegraph Acts, 379.

ARRANGEMENT,

scheme of, under Railway Companies Act, 1867...63.

ARRAY, no challenge to, allowed, 212.

ASSESSING TRIBUNAL. *See* SURVEYORS—JUSTICES—ARBITRATION—JURY.

if improperly constituted, prohibition or injunction, 172, 188.

jurisdiction of, 221.

to assess amount of purchase-money or compensation, 221.

for all lands included in same notice to treat, 206.

or in counter notice, 206.

ASSESSING TRIBUNAL—*continued*.

- jurisdiction of—*continued*.
 - where part only of house taken, 221.
 - assessment of amount final, if right principle adopted, 225, 226, 232, 234, 237.
 - separate assessment of purchase-money and compensation,
 - at option of either party, 227.
 - in submission to arbitration, 222.
 - in application to justices, 222.
 - in warrant to sheriff, 223.
 - in claims for injury to lands, 223.
 - not to determine title, 172, 222.
 - nor right to compensation, 172, 222.
 - nor any collateral matters, 224.
 - nor to award interest, 194, 226.
- setting aside assessment, 237. *See* ASSESSMENT.

ASSESSMENT,

- of price following notice to treat constitutes a contract, 56.
- claimant can compel, 87, 102.
- in case of lands injuriously affected, 142, 167.
- a second, 169.
- separate, 236.
- finality of, 225, 226, 232, 234, 237.
- enforcement of, 228.
 - by specific performance, 228.
 - owner has rights of unpaid vendor, 230.
 - in case of bonds, 231.
 - on default of promoters to summon jury, 231.
 - defences to action for, 231, 234.
 - by justices, 182, 233.
 - of award, 197, 233.
- setting aside, 237.
 - by *certiorari*, 210, 214, 237.
 - time for, 240.
 - for want or excess of jurisdiction, 237.
 - where tribunal improperly constituted, 239.
 - affidavit stating grounds for, 240.
 - where part only bad, 240.
 - an award, 189, 241.
 - remitting on application for, 243.
- Rules as to, under Acquisition of Land Act, 1919...321.
- admissibility of former, as evidence, 322.
- by Commissioners of Inland Revenue, 331.
 - evidence as to, before official arbitrator, 332.

ASSIGNMENT OF COMPENSATION, 170.**ASYLUM**, acquisition of land for, 380.**ATTACHMENT**,

- to enforce award of arbitrator after valuation of surveyor, 175, 187.
- in case of refusal to obey arbitrator or umpire, 193.

ATTORNEY-GENERAL, application for injunction by, where promoters take lands *ultra vires*, 45.

AWARD,

- form of, 194.
- to be delivered to promoters, 194.
- should include arbitrators' costs, 198.
- need not include costs of the arbitration, 202.
- may be stated as a special case, 195, 235, 243.
- formal defects and errors in, may be corrected, 199, 237, 240.
- within what time to be made, 196.
 - court has power to enlarge time, 196.
- taking up, 197.
 - mandamus to compel promoters to take up, 197.
 - what is an answer to, 199.
 - if owner takes up, he cannot recover the amount paid to arbitrators, 198.
- evidence not admissible to explain, 199, 236.
- enforcing award, 197, 228, 233. *See* ASSESSMENT.
 - if lands taken,
 - not summarily if any question of right or title involved, 198, 233.
 - by specific performance, 228.
 - cannot be enforced if title bad, 229.
- setting aside, 189, 241.
 - grounds for, 241.
 - procédure, 242.
 - time for, 242.
- remitting the, 197, 235, 243.
- costs of, 198.
- under Acquisition of Land Act, 1919...329.
 - finality of, 329.

B.**BENEFICIAL OWNER.** *See* OWNER.

- necessary to treat with, 51.

BETTERMENT CHARGE,

- none under L. Cl. Acts, 115, 167.
- history of principle of, 315.
- under Housing Acts, Part II., 362.
 - Town Planning schemes, 367.
 - Light Railways Acts, 385.

BILL IN PARLIAMENT, costs of opposing, allowed in some cases to tenant for life, 267.**BOARD OF AGRICULTURE.** *See* MINISTRY OF AGRICULTURE.**BOARD OF TRADE,**

- in case of railways, approval of surety to bond by, 100, 383.
 - appointment of surveyor by, 96, 176, 383.
 - authorisation of construction by certificate of, 383.
- appointment of umpire by, 192.

BOND,

- in case of entry on lands before payment of compensation, 97.
- to be given by promoters, 99.
- form of, 99.

BOND—*continued*.

- sureties to, 100, 383.
- interest on, 100.
- money deposited is security for fulfilment of, 97.
- power of court to deal with deposit if condition is fulfilled, 97, 384.
- if condition is not fulfilled, 98, 384.
- owner's rights in case of, 231, 384.
- applications as to, 385.

BOOKS OF REFERENCE, 17. *See* PLANS.

BOROUGH COUNCIL, acquisition of land for small holdings, &c., 371.

BRINE PUMPING (COMPENSATION FOR SUBSIDENCE) ACT, 1891...387.

BUILDING PURPOSES,
no right of pre-emption of superfluous lands used for, 312.
meaning of the words, 312.

BUILDINGS. *See* OTHER BUILDING.
re-investment of money deposited, in new, 254.
in additions to and improvements of, 255.
not in repairs, 255.
removing and replacing, when interfered with, 256.

BUILT UPON,
no right of pre-emption of superfluous lands built upon, 313.
meaning of the words, 44, 313.

BURIAL GROUND,
principles on which compensation to be assessed for closed, 113.
application of money deposited in respect of, 252.

C.

CAPITAL,
must be subscribed before exercise of compulsory powers, 65.
certificate of two justices conclusive evidence of subscription, 65.
when required, 65.
is a protection to owners, not to promoters, 65.
want of certificate is no answer if owner desires value of lands to be assessed, 65.
entry on lands cannot be prevented on ground of non-subscription of, 90.

CEMETERIES CLAUSES ACT, 1847...387.

CENTRE LINE OF UNDERTAKING, 20. *See* DEVIATION—DELINEATED.

CERTIFICATE,

- of justices as to correction of plans, 22.
- of justices that capital has been subscribed, 65.
- of value under Acquisition of Land Act, 1919...332.

CERTIORARI,

- to quash inquisition, 210, 226.
- assessment of justices or jury quashed by, 210, 214, 237.
- not granted for irregularities in form, 214, 237, 241.
- where owner can have no claim, 237.
- mistake in subject-matter, 238.
- for want of jurisdiction, 210, 214, 226, 237.
- where assessment is on a basis bad in law, 239.
- if tribunal improperly constituted, 239.
- this may be waived, 239.
- if part bad, whole bad unless separable, 240.
- time within which application should be made, 240.
- affidavit on application for, 240.

CESTUI QUE TRUST. *See* TRUSTEE.

CHALLENGE, extent of rights of, 212.

CHAPELS, enfranchisement of sites of, lxxxii.

CHARGE, 297. *See* RENT-CHARGE.

CHARITY,

- trustees of, powers of sale of, 50, 59, 257.
- may be absolutely entitled to payment out of deposit, 257.
- payment of dividends to secretary of, 263.
- on what parties summons for application of deposit should be served in case of, 264.

CHARITY COMMISSIONERS, consent of, required in some cases, 59, 257.

CHIEF-RENT, release of lands from, 297.

CHOSE IN ACTION, compensation is, 170.

CLAIM,

- when owners must send in, 74.
- quality and quantity of owner's interest should be fully stated in, 186.
- assumed to be correctly stated before assessing tribunal, 222.
- fixes amount in default of promoters issuing warrant under sect. 68...208, 231.
- amount of, does not bind tribunal, 186.
- notice of, under Acquisition of Land Act, 1919...326, 328.

CLAIMANT. *See* OWNER—PARTIES.

CLAY, when a mineral, 137.

CLOSED BURIAL GROUND. *See* BURIAL GROUND.

COASTGUARD PURPOSES, acquisition of land for, 380.

- COLLATERAL PURPOSES,
lands cannot be taken for, 27.
what are, 27.
- COLLEGES, investment in buildings by, 255, 259.
- COMMISSIONERS acting for executive may withdraw a notice to treat, 80.
- COMMISSIONERS OF INLAND REVENUE,
reference to, under Acquisition of Land Act, 1919...331.
procedure as to, 332.
evidence of assessments by, 332.
- COMMISSIONERS, FORESTRY, 377.
- COMMITTEE. *See* LUNATIC—COMMON LANDS.
- COMMON OR WASTE LANDS, 289.
compensation for rights in soil, 289.
conveyance to promoters, 289.
in default of conveyance, deed-poll by promoters, 289.
compensation for commonable rights, 289.
appointment of a committee, 290.
powers of committee, 290.
application and apportionment of compensation, 291.
committee may apply to Ministry of Agriculture, 291.
if no committee, compensation fixed by a surveyor, 176, 292.
upon payment or deposit of compensation, commonable rights vest in promoters, 292.
if commoners not compensated, action for disturbance of commonable rights, 293.
costs of commoners, 293.
reinstatement, under Housing Acts, 366.
compensation for extinction of rights of, under Commons Act, 1899...377.
- COMMONABLE RIGHTS COMPENSATION ACT, 1882...292, 469.
See APPENDIX, 469.
- COMMONS ACT, 1899...377. *See* APPENDIX, 600.
- COMMUNICATIONS. *See* INTERSECTED LANDS.
in case of intersected lands, 34.
cost to be determined at request of either party, 34.
- COMPENSATION FOR LANDS TAKEN, 107.
for mesne profits, if omission to purchase an interest, 69.
for owner's interest at time of notice to treat, 81.
date as at which assessed, 82.
mode of estimating, 107.
payment enforced by remedies of an unpaid vendor, 61, 230.
or under sect. 87...230.
payment enforced by action, 231.
assessment of, only fixes amount, 221.
not title or right to compensation, 222, 234.
basis of, is value of lands to owner, 108.

COMPENSATION FOR LANDS TAKEN—*continued.*

- what matters must be considered, 109.
 - present and future advantages, 109.
 - special market value, 109.
 - special adaptability, 111.
 - restrictions attaching to land, 112.
 - reinstatement, 114.
 - betterment, 115. *See* BETTERMENT CHARGE.
 - damage through removal, 116.
 - fixtures, 116.
 - goodwill, 117.
 - remoteness of, 118.
- to whom payable, 119.
- method of calculating, in case of owner in possession, 119.
 - tenant, 121. *See* LESSEE.
 - reversioner, 119.
 - copyholds, 120, 286. *See* COPYHOLDS.
- interest payable on purchase-money for lands, 139.
 - for mines, 140.
- allowance for compulsory purchase, 141.
- accommodation works, 127.
- only for a legal or equitable interest in land, 124.
- in case of mines and minerals, 127. *See* MINES AND MINERALS..
 - of common or waste lands, 289. *See* COMMON LANDS.
 - of mortgages, 293. *See* MORTGAGE.
 - of rent-charges, 297. *See* RENT-CHARGE.
 - of leases, 298. *See* LEASE.
- assignability of, 170.

COMPENSATION FOR LANDS INJURIOUSLY AFFECTED,
142. *See* INJURIOUSLY AFFECTING.COMPULSORY HIRING, 372. *See* AGRICULTURE.

COMPULSORY POWERS,

- time within which to be exercised, 78.
- capital must be subscribed before exercise of, 65.
 - certificate of justices conclusive, 65.
- notice to treat is not necessarily an exercise of, 66.
- service of notice to treat within prescribed time enables promoters to exercise, 78.
- effect of delay on exercise of, 78, 85.
- entry under sect. 85 is not an exercise of, 100.

COMPULSORY PURCHASE,

- allowance for, 141.
- none under Acquisition of Land Act, 1919...322.

CONSENT,

- entry on lands by, 89.
- cannot be revoked, 90.
- if no consent, promoters are trespassers, 60, 90.
 - and liable to injunction or action, 60, 90.

CONSTRUCTION,

- evidence of experts not admissible to construe deposited plans, 20.
- of special act,
 - ordinary and literal meaning, 24.
 - in cases of ambiguity, 24.
 - in case of special clauses incorporating agreements, 25, 319..

CONSTRUCTION—*continued*.

- of word "undertaking," 4, 25.
- does not include collateral purposes, 27.
- what are "purposes of the undertaking," 27.

CONTRACT. *See* AGREEMENT.

- forms in which contract for purchase of lands can be made, 53.
- under Companies Clauses Act, 1845...53.
- under seal, 53, 54.
- under L. Cl. Act, after notice to treat and fixing of price, 55.
- notice to treat is not a, 55, 56.
- ratification by company of promoters', 55.

CONTRACTING PARTY, meaning of, in sect. 73...266.**CONVEYANCE**, 244. *See also* OWNER.

- parties, 47.
- sect. 7 does not alter parties to be joined in a conveyance, 51.
- no action for payment of price until after, 230.
- by owner absolutely entitled, 244.
- trustees with absolute power of sale, 244.
- owner must accept purchase-money when tendered, 244.
- costs of, 245.
- taxation of, 246.
- if owner refuses to convey, 247.
- of copyhold lands, 285.
- of common lands, 289.
- of superfluous lands, 313.

COPYHOLD ACT, 1894, assessment of compensation under, 289.**COPYHOLDS**, 285.

- compensation for, 120.
- enfranchisement of, 120, 286.
- re-investment of deposit in, 254.
- conveyance of copyhold lands, 285.
- steward entitled to fees of surrender, 285.
- enfranchisement of, 286.
- application of money paid into court for, 286.
- compensation for enfranchisement, 286.
- basis of, 287.
- must be invested if lord of the manor is tenant for life, 287.
- until enfranchisement lands subject to fines, &c., 287.
- lord of manor to enfranchise, 288.
- in default, promoters may execute deed poll, 288.
- apportionment of rents if part only taken, 288.

CORONER,

- to summon jury, if sheriff interested, 209.
- if interested, ex-coroner, 209.
- what constitutes interest, 210.
- has all powers of sheriff, 210.

CORPORATIONS,

- power of, to sell lands, 48.
- approbation of Ministry of Health in certain cases, 59.
- must contract under seal, 54.
- service of notice to treat on, 77.

COSTS,

- in case of small portions of intersected land, 34.
- in case of lands omitted to be purchased through mistake, 70.
- of declaration by surveyor, 175.
- of proceedings in High Court are in discretion of Court, 275.
- of valuation by surveyor, 177, 187.
- of inquiry before justices, 183.
- of arbitrators should be dealt with in award, 198.
- of arbitration, borne by promoters unless award same or less than previous offer, 200.
- award need not include costs, 202.
- taxation of, by a master, at request of either party, 202.
- not open to review before court, 203.
- mandamus to master to tax, 203.
- action for costs maintainable before taxation, 203.
- owner's right to, not dependent on validity of his title to lands taken, 203, 217.
- secus* in case of lands injuriously affected, 203.
- owner has no lien for, 204.
- of arbitration after valuation of a surveyor, 175, 187.
- of arbitration as to value of superfluous lands, 188, 313.
- of inquiry before jury borne by promoters unless verdict same or less than previous offer, 215. *See* OFFER.
- when verdict set aside, 217.
- taxation of, by a master, 217.
- not open to review before court, 218.
- mandamus to master to tax, 218.
- action for, maintainable before taxation, 218.
- recoverable by distress warrant, 218.
- of conveyance, borne by promoters, 245.
- taxation of such costs, 246.
- in case of money deposited, 274. *See* DEPOSIT.
- of commoners, 293.
- of apportioning rent, 246, 277, 299.
- under Light Railways Acts, 386.
- of arbitration under Acquisition of Land Act, 326.
- rules as to, 326.
- taxation of, 327.
- payment of, 327.
- recovery of, 327.
- of arbitration as to omitted interest under Housing Acts, Part I., 360.

COUNTER-NOTICE,

- under Lands Clauses Act, 1845, s. 92,
- by owner of a house, &c., 40.
- after, owner can apply for injunction, 41.
- on application, question what is part of a house, &c. decided, 41.
- form of, 41.
- contents of, 41.
- time for, 42.
- effect of, 42.
- on notice to treat, 80.
- owner to have opportunity for agreement, 42.
- election of promoters to take whole house, &c., 42.
- limitations of sect. 92 in special acts, 43, 351, 362.
- deposit on entry before purchase must include value of lands in, 94.
- assessment by jury includes value of lands in, 206.
- by company in case of mines and minerals, 133.

COUNTY COUNCIL, powers of, under Local Government Act, 1888...345.

COUNTY COURT JUDGE, powers of, under Telegraph Acts, 379.

COVENANTS,

effect of, 124. *See* SPECIAL COVENANTS.

restrictive, compensation for breach of, 156.

CROWN. *See* EMERGENCY.

not included in definition of owner, 48.

procedure in case of adverse claim by, to money deposited, 273.

acquisition of land by, in time of emergency, 334.

CURTILAGE, house includes, 38.

CUSTOMS OFFICES, acquisition of land for, 380.

D.

DAMAGE,

ordinary rules as to remoteness of, apply in assessing compensation, 118.

prospective damage to mines not assessable, 135.

permanency of, not material in cases of injuriously affecting, 157.

all damage capable of being foreseen to be considered, 167.

can there be a second assessment of unforeseen damages? 169.

DEATH,

of arbitrator, 191. *See* ARBITRATION.

of applicant during carriage of an order, 252.

DECLARATION,

by arbitrators or umpire of impartiality, 189.

to be annexed to award, 189.

may be waived by consent, 189.

not required under Acquisition of Land Act, 1919...325.

by surveyors, 173.

cost of, 175.

DEED-POLL,

execution of, after deposit of purchase-money, if owners refuse to convey, or do not show title, or cannot be found, 176, 247, 269.

vesting of lands in promoters on execution of, 176, 269.

in default of enfranchisement by lord of a manor, 288.

in default of conveyance of rights in soil of a common, 289.

after payment or deposit of compensation for commonable rights, 176, 292.

in default of conveyance of his interest by a mortgagee, 295.

in default of release of a rent-charge, 297.

DEFENCE ACT, 1842...335. *See* APPENDIX, 489.

DEFENCE ACT, 1854. *See* APPENDIX, 499.

DEFENCE ACT, 1860. *See* APPENDIX, 500.

DEFENCE OF THE REALM (ACQUISITION OF LAND) ACT,
1916, application of Acquisition of Land Act, 1919, to, 330.

DEFENCE OF THE REALM CONSOLIDATION ACT, 1914...336.

DELAY, effect of, on notice to treat, 83, 85.

DELINEATED. *See* DEVIATION.

lands are, if so shown on plans that owner has notice of power to take, 18.

not limited to lands surrounded by lines, 19.

lands within limits of deviation are "delineated," 22.

DEPOSIT OF MONEY IN COURT, 248.

by way of security before entry under sect. 85...94.

what to be included, 94.

amount fixed by a surveyor, 96.

appointment of surveyor, 96.

how deposit is to be made, 96.

is security for fulfilment of bond, 97.

power of court to deal with deposit, 97.

in case of absent owners, 70, 175.

after arbitration following valuation by surveyor, 187.

in case of persons under disability, or where there are interests in reversion or remainder, 248.

sums over 200l....248.

sums between 200l. and 20l....248.

appointment of trustees, 248.

sums not exceeding 20l....249.

payment out of surplus not exceeding 20l....249.

promoters compellable to deposit the money, 249.

title not conditional on deposit, 249.

dispensed with where immediate transfer to another account is necessary, 249.

interest ceases to run from time of, 249.

unless by special agreement, 249.

deposit considered as realty, 250.

application of money deposited, 250.

summons on petition for, 250.

procedure as to, 250.

in case of interim or permanent investments, 251.

who can apply, 252.

affidavit in, 252.

(1) in redemption of land tax, 253.

costs, 253.

in discharging incumbrances, 253.

(2) in purchase of other lands, 254.

when erection of new buildings equivalent to re-investment in lands, 254.

additions to and improvements of buildings, 255.

but not, as a rule, money spent in repairs, 255.

permanent improvements, 255.

(3) in removing and replacing buildings interfered with, 256.

(4) in payment to party absolutely entitled, 256.

who are parties absolutely entitled, 256.

party absolutely entitled may have money re-invested in land at cost of promoters, 259.

DEPOSIT OF MONEY IN COURT—*continued.*

application of money deposited—*continued.*

(5) under Universities and College Estates Acts, 259.

(6) under Settled Land Acts, 1882 (sect. 32) and 1890... 259.

under Housing of the Working Classes Act, 1890...261.

(7) in interim investment, 261.

dividends, interest, &c., application for, 263.

service of petition or summons, 263.

on remainderman or reversioner, 263.

on incumbrancer, 264.

on other parties, 264.

appearance of parties served, 265.

costs of, 265.

if party not absolutely entitled, any sum exceeding 20*l.* to be paid into bank or to trustees, 266.

court or trustees may allot a portion of deposit to owner of limited estate as compensation for any injury, &c., 267.

what included in "injury, &c.," 267.

application of money deposited in respect of leases or reversions, 267.

when lands are let on lease by a life owner, 268.

life interest in leaseholds, 268.

adjustment of rights between tenant for life and remainderman, 268.

annuity secured on leaseholds to be paid in full, 269.

procedure if after deposit owner refuses to convey, does not show title, or cannot be found, 269.

mandamus to promoters to deposit, 271.

summons or petition for application of deposit, 271.

if question of title arise, court to decide, 272.

adverse claim by the Crown, 273.

party in possession deemed owner till contrary shown, 273.

who is a party in possession, 273.

sect. 79 only applies to an application to deal with money in court, 274.

costs where money deposited in bank, 274.

dealt with by sect. 80 of L. Cl. Act, 274.

discretion as to costs of proceedings in court given by Judicature Act, 1890, s. 5...274.

promoters not liable to pay unnecessary costs, 275.

what are unnecessary, 275.

costs payable by promoters, 276.

(1) of purchase and taking of lands, 276.

(2) of investment in government or real securities, 277.

(3) of re-investment in lands, 278.

under Settled Land Act, 1882...280.

(4) of payment out of court, 280.

costs not payable by promoters, 281.

subject to overriding discretion of court, 281.

(1) if money deposited through wilful refusal of owner, after tender of price, to receive same or to convey lands, 281.

(2) if money deposited through wilful neglect to make a good title, 282.

(3) of litigation between adverse claimants, 282.

(4) if due to delay by persons entitled, 283.

DEPOSIT OF MONEY IN COURT--*continued.*

- costs where fund deposited by several promoters, 283.
- amalgamation of companies, 284.
- in case of common lands, 292.
 - mortgages, 295.
 - rent-charges, 297.

DEPOSITED PLANS. *See* PLANS.

DEPUTY, included under definition of sheriff, 210.

DEVELOPMENT COMMISSIONERS, 375.

DEVELOPMENT OF LAND, &c., 375.

- bodies empowered to acquire land for, 375.
- method of acquisition, 376.
- compensation, 376.
- part only of a building may be acquired, 376.
- Road Board, 376.
 - powers of, 377.
- land drainage, 377.
- forestry, 377.

DEVELOPMENT AND ROAD IMPROVEMENT FUNDS ACT,
1909...375. *See* APPENDIX, 581.

DEVIATION,

- limits of, required in certain cases by Standing Orders, 20.
- centre line of the undertaking must be within limits of, 20.
- in case of railway, lands outside limits may be taken for purposes other than the line, 20, 21.
 - lands within limits of, are delineated, 22.
- right of, does not imply a right to dispense with a large portion of the statutory works, 20.
- promoters must make good poor's rate on lands taken outside limits of, 300.

DISABILITY. *See* OWNER.

- parties under,
 - in what cases authorized to sell and convey, 48.
 - may bind interests in reversion, 51.
- purchase from, of lands for extraordinary purposes, 33, 52.
- protection of, in purchase by agreement, 57.
- price not less than valuation by surveyor, 173. *See* SURVEYORS.
- deposit of purchase-money and compensation in case of, 248. *See* DEPOSIT.

DISENTAILING DEED required in some cases before allowing
payment out of deposit to tenant in tail, 259.

DISTRESS,

- payment of award by justices not enforceable by, 182, 233.
- costs of inquiry before a jury recoverable by, 218.

DIVERSION OF PUBLIC FOOTPATH, land may be taken for, 29.

DIVIDENDS,

- payment of, on interim investment, 263.
- application by summons, 263.
- in case of a lunatic, 263.
- in case of a charity, 263.
- payment of, if money deposited under sects. 76, 77...271.
- summons for, 272.

DOWRESS,

- power of, to sell and convey, 49.
- is a person absolutely entitled, 258.

DRAINAGE OF LAND, 377.

E.

EASEMENTS,

- included in term "lands" in L. Cl. Acts, 9.
- promoters cannot compel owners to grant, unless there are special powers, 11, 15, 17.
- no notice of intention to take necessary, 12.
- in case of interference with, compensation to be claimed for injury to dominant tenement, 11, 152, 154.
- power to appropriate and use the subsoil is not an easement, 10, 72, 92.
- under Waterworks Clauses Act, 1847...14, 15.
- promoters must take lands over which they construct arches, or under which they tunnel, 15.
- injunction not granted to restrain interference with, 92.
- after damage sustained, compensation assessed under sect. 68 ...92.
- not within sects. 84—90 of L. Cl. Act, 92.
- under Education Acts, 12.
- Public Health Acts, 338.
- Metropolis Management Acts, 348.
- Housing Acts, 358.
- Small Holdings, &c. Act, 1908...374.
- Development and Road Improvement Act, 1910...375.

ECCLESIASTICAL COMMISSIONERS,

- consent of, when required, to be obtained out of court, 264.
- payment to, of compensation for ecclesiastical lands, 365, 376.

EDUCATION, acquisition of land for purposes of, 380.

EDUCATION ACT, 1921. *See* APPENDIX, 608.

ELECTRIC LIGHTING CLAUSES ACT, 1899...387.

ELECTRICITY SUPPLY ACT, 1919...387.

ELECTRIFICATION OF RAILWAYS, 383.

ELEMENTARY EDUCATION ACTS, 380.

- "lands" in, include rights over land, 12.

EMERGENCY,

- acquisition of land by Crown in time of, 334.
- royal prerogative, 334.
- early statutes, 334.
- Defence Act, 1842...335.
- later statutes, 335.
- Emergency Powers Act, 1920...336.
- Telegraph Acts, 379.

EMERGENCY POWERS ACT, 1920...336. *See* APPENDIX, 505.

EMINENT DOMAIN, meaning of, 1.

ENCLOSURE ACT, 1854. *See* APPENDIX, 467.

ENFRANCHISEMENT, 286. *See* COPYHOLDS.

ENFRANCHISEMENT OF THE SITES OF PLACES OF WORSHIP ACT, 1920...lxxxii.

ENGINEER OF PROMOTERS, affidavit by, that lands are required, 30.

ENHANCED VALUE. *See* BETTERMENT.

ENTRY ON LANDS,

- for temporary purposes, 33, 34,
- under agreement, 61, 231.

ENTRY ON LANDS BEFORE PURCHASE, 89.

- if promoters enter on lands without authority, they are trespassers, and remedy is by action and injunction, 60, 89, 90.
- for temporary purposes, 33.
- for surveying without consent, 89.
- by consent, 89.
- penalties for wrongful, 90.
- under sects. 84—90, L. Cl. Act, 89.
 - easements not within these sections, 92.
 - only if lands permanently required, 93.
 - entry may take place at any time, 94.
- procedure under sects. 85—90...94.
- deposit by way of security, 94.
 - what to be included, 94.
 - amount fixed by surveyor, 96.
 - appointment of surveyor, 96.
 - how deposit is made, 96.
 - is security for fulfilment of bond, 97.
- power of court over deposit, 97.
- bond to be given by promoters, 99.
 - form of, 99.
 - sureties to, 100, 383.
 - interest on, 100.
- effect of entry under sect. 85...100.
- entry need not be within time limited for exercise of compulsory powers, 100.
- no action can be brought against promoters if they comply with sects. 84—90...101.
- when lands entered on and value assessed, owner is in position of unpaid vendor, 102, 231.

ENTRY ON LANDS BEFORE PURCHASE—*continued.*

- when lands entered on, owner can compel assessment, 102.
- sect. 68 only applies in case of actual entry, 103.
- meaning of "taking," 104.
- wilful entry on lands, 105.
- fixes nature of tenancy, 180.

EQUITABLE MORTGAGEE. *See* MORTGAGE.

- remedies of, 60.
- service of notice to treat on, 75.

ERRORS

- in plans, how remedied, 22.
- in award, if formal, may be corrected, 199, 237, 240, 241.

EVICTON, compensation when lands taken includes all loss consequent on, 116.**EVIDENCE.** *See* WITNESS.

- of experts not admissible to explain deposited plans, 20.
- of promoters' engineer that lands are required, 30.
- certificate of two justices conclusive that capital subscribed, 65.
- amount of offer not admissible in, 115, 200, 216.
- as to cost of lands may be relevant, 119.
- as to purpose for which lands taken, 167.
- improper rejection or admission, no ground for reviewing inquisition, 226.
- verdict of jury or award not, of right to compensation, 234.
- affirmative evidence necessary, 234.
- of arbitrator, how far admissible, 199, 236.
- certified copies of verdict and judgment before jury are, 214.
- on application for certiorari, 240.
- as to whether lands have or have not become superfluous, 306.
- "returns and assessments" admissible as, 322.
- of *bonâ fide* offers, 324.
- of assessment by Commissioners of Inland Revenue, 332.
- as to premises in unhealthy area, 357, 360.

EXECUTOR OR ADMINISTRATOR,

- power of, to sell and convey, 50.
- restricted meaning of term, 51.
- of applicant can carry through an order dealing with deposit, 252.

EXPECTANCY, estates in. *See* REVERSION—REMAINDER.**EXPERTS,**

- evidence of, not admissible to explain deposited plans, 20.
- expert arbitrators need not hear parties or witnesses, 193.

EXTRAORDINARY PURPOSES,

- how lands may be acquired for, 32.
- defined, 32.
- promoters may sell such lands and purchase others, 33.
- lands acquired for, cannot be treated as superfluous lands, 305.
- right of promoters to alienate, 305.

F.

FASCICULI of clauses, incorporation of, in Lands Clauses Acts, 6.

FEE SIMPLE, owner of, how compensation assessed, 119.

FERRY,

injury to, by reason of opening of railway and footbridge, 160.
access to, interference with, 152.

FINES, compensation for, 120, 287.

FIXTURES,

compensation for, 116.
trade, included in term "manufactory," 39.

FOOTPATH, power of promoters to take lands for diversion of, 29.

FORCED SALE, compensation for, 116.

FORESHORE, acquisition of rights over, 377.

FORESTRY, acquisition of land for, 377.

FORESTRY ACT, 1919. *See* APPENDIX, 587.

FORESTRY COMMISSIONERS, 377.

FRAUDS (STATUTE OF), does not apply to notice to treat, 56.

G.

GARDEN, when part of a house, 37.

GARDEN CITIES, 369.

GAS AND WATERWORKS FACILITIES ACT, 1870...387.

GASWORKS CLAUSES ACT, 1871, does not exonerate promoters
from proceedings for nuisance, 31.

GOODWILL,

compensation for, 117.
no compensation for, in case of injurious affection, 158.
when it passes to mortgagee, 57, 76, 118, 296.

GUARDIAN. *See* INFANT.

power of, to sell lands, 49.
to represent interests in reversion, 51.

H.

HARBOURS, DOCKS AND PIERS CLAUSES ACT, 1847...386.

HEALTH, MINISTRY OF. *See* MINISTRY OF HEALTH.

HEREDITAMENTS,

incorporeal, included in "lands," 8.

of any tenure, meaning of, in L. Cl. Acts, 8, 9.

HIGHWAY,

ownership of land under, 71.

necessity of notice to treat for land under, 71.

obstruction of, may give right to compensation, 155.

HIRING, COMPULSORY, 372. *See* AGRICULTURE.

HOSPITAL,

is a house within sect. 92...36.

acquisition of land for isolation, 380.

HOUSE,

no party compellable to sell part of, 35. *See* COUNTER-NOTICE.
who is "party," 34.

if owner require whole to be taken, promoters may withdraw
notice to treat, 42, 80.

counter-notice suspends notice to treat, 42.

election by promoters to take whole, must be made in a reason-
able time, 42.

what is a reasonable time, 42.

what comprised in term "house," 36, 37.

includes garden, &c., 37.

includes curtilage, 38.

"other building" extends application of "house," 39.

whether lands are part of a house to be determined as at time of
notice to treat, 40.

limitation of sect. 92 in special acts, 43.

owner cannot require less than whole to be taken, 41.

time for promoters taking whole, 42.

what constitutes election to take whole, 42.

jurisdiction of assessing tribunal where part only taken, 221.

part only may be taken under—

Michael Angelo Taylor's Act, 351.

Housing Acts, Part II., 362.

Development and Road Improvement Act, 376.

unhealthy, under Housing Acts, Part II., 361.

HOUSING,

new principles of compensation as to, 354.

statutes dealing with, 354.

application of Acquisition of Land Act, 1919...354.

Part I., unhealthy areas, 355.

compensation in case of, 356, 357, 359.

evidence as to, 357, 360.

easements, 358.

arbitrator's powers, 358.

land included which is not unhealthy, 359.

compensation for, 359.

omitted interests, 360.

costs, 360.

HOUSING—*continued*.

- Part II., unhealthy dwelling-houses, 361.
 - demolition of, 361.
 - right of owner to site, 361.
 - power to take part only, 362.
 - compensation, 362, 363.
 - contribution from premises improved ("betterment"), 362.
 - reconstruction scheme, 363.
- Part III., working class lodging-houses, 364.
 - powers of local authority, 364.
 - procedure as to compensation, 364.
- general provisions, 365.
 - compensation payable to local authority, 365.
 - deficiency of land tax and poor's rate, 366.
 - ancient monuments, 366.
 - commons and open spaces, 366.
 - water rights, acquisition of, 366.

HOUSING AND TOWN PLANNING ACTS, 354. *See* HOUSING—TOWN PLANNING.

HOUSING OF THE WORKING CLASSES ACT, 1890. *See* APPENDIX, 531.

- investment of money paid into court under, 261.
- practice as to applications for, 265.
- application of Acquisition of Land Act, 1919, to, 330, 354.

HOUSING, TOWN PLANNING, &c. ACT, 1909. *See* APPENDIX, 547.

HOUSING, TOWN PLANNING, &c. ACT, 1919. *See* APPENDIX, 559.

I.

IDIOT. *See* LUNATIC.

IMPROVEMENTS,

- deposit in some cases applied to permanent, 255.
 - under Settled Land Acts, 259.
 - under Housing of Working Classes Act, 1890...261.
- by promoters not taken into account in assessing compensation for lands omitted to be purchased, 70.
- improvement charge. *See* BETTERMENT.
- improvement schemes, making good poor's rate in case of, 300.

INCAPACITY. *See* DISABILITY.
of arbitrator, 191.

INCLOSURE ACT, 1854. *See* APPENDIX, 467.

INCORPORATION,

- L. Cl. Acts apply to every undertaking of a public nature, 4.
 - in special acts, 4—7.
 - passed before 1845, but subsequently varied, 5.
- of portions of L. Cl. Act, 6.
- of agreement in special Act, 25, 319.
- of superfluous lands clauses, 314.

INCORPOREAL HEREDITAMENTS, 8.

INCUMBRANCES,

- application of deposit in discharge of, 253.
- what are, 253.
- release of lands from, 297.

INCUMBRANCER. *See* MORTGAGE.

- service of petition for application of deposit on, 264.
- appearance of, 265.
- may apply under sect. 78...272.

INFANT,

- guardian of, may sell and convey lands, 49.
- devisee of owner held to be trustee, 51.

INJUNCTION,

- to restrain promoters from enforcing notice to take part of a house, &c., 41.
- to restrain promoters from taking lands *ultra vires*, 45.
 - by whom it may be applied for, 45.
- to restrain promoters from interfering without authority with possession of owner, 60, 89, 90.
- to restrain promoters from continuing in possession without authority, 91.
- to restrain promoters from proceeding without complying with conditions precedent, 107, 208.
- if assessing tribunal not properly constituted, 172, 188.
- where undertakers refuse compensation, 170.
- not granted to try right to compensation, 88, 107.
 - to prevent interference with an easement, 12, 92.
 - entry on ground that capital not subscribed, 90.
 - use of land in case of purchase by agreement, 61.
 - unless land unsaleable, 62.

INJURIOUSLY AFFECTING, 142.

- of interest created subsequently to notice to treat, 84.
- L. Cl. Act, 1845, gives compensation for injury to lands, 147.
- provisions of L. Cl. Acts, 143.
 - Railways Clauses Act, 1845...144.
 - Waterworks Clauses Act, 1847...145, 160.
 - Public Health Act, 1875...148, 340.
- different principles if lands held or not held with lands taken, 142.
- time at which assessment should be made, 142, 167.
- if no lands taken, damage, to give claim to compensation, must comply with four conditions, 148.
 - (i) must result from act legalized by statute, 149.
 - (ii) must be such as would be actionable but for statute, 150.
 - structural damage, 152.
 - interference with easement or similar private right, 11, 152, 154.
 - sewers, 153.
 - sporting rights, 10, 153.
 - water rights, 153.
 - privacy, 154.
 - obstruction of public right, 155.

INJURIOUSLY AFFECTING—*continued.*

if no lands taken, damage, &c.—*continued.*

(iii) must be an injury to lands, 151, 158.

examples, 158.

(iv) must arise from construction and not from user of works, 151, 159.

examples, 159.

in case of Waterworks Clauses Act, 160.

if lands taken, compensation for damage to lands held there-with, 161.

(i) only for acts legalized by statute, 162.

(ii) not material whether injury would have been actionable but for statutory powers, 162.

(iii) owner entitled to compensation for all consequential damage, 164.

(iv) arising from user as well as from construction of works, 165.

what are "lands held with lands taken," 161.

purposes for which land required considered, 167.

benefit of undertaking to owner not to be considered, 115, 167.

compensation where no lands taken should be assessed after injury, 142, 167.

all damage capable of being foreseen to be included, 167.

can there be a second assessment in respect of unforeseen damage? 169.

right to compensation for, is a legal chose in action, 170.

no interest can be given on amount awarded, 170.

when compensation is refused, an injunction will be granted, 170.

by town planning scheme, 367.

by making open space, 381.

INJURY, INCONVENIENCE, OR ANNOYANCE,

what included in, under sect. 73...267.

INLAND REVENUE, COMMISSIONERS OF,

reference to, 331.

assessment by, 332.

INQUISITION. *See* JURY.

form of, 214.

should be signed by sheriff, 214.

recording of, 214.

validity of, should be questioned by *certiorari*, 210, 226.

INTEREST,

in case of entry on lands under sects. 84--90...100.

on purchase-money, follows ordinary rule of vendor and purchaser, 139.

if possession taken before assessment, interest runs from date of taking possession, 139.

none payable in case of minerals, 140.

in case of lands injuriously affected, 170.

not within jurisdiction of assessing tribunal, 134, 141, 170, 194, 226.

ceases to run from date of deposit in court under sects. 69, 71...249.

INTEREST IN ASSESSING TRIBUNAL,

- surveyor should be impartial, 58, 176.
- arbitrators or umpire should be impartial, 189.
- declaration of impartiality, 189, 325.
- justices not to be interested, 181.
- sheriff not to be interested, 210.
- what constitutes interest in, 210.
- if sheriff interested, coroner to summon jury, 209.
- objection may be waived by consent, 188, 210.
- not if party is ignorant of interest, 210.
- certiorari* where sheriff interested, 210.

INTEREST IN LANDS,

- what is and is not, 9, 10.
- omitted to purchase by mistake, 68. *See* OMISSION.
- interest of owner in land taken is fixed by notice to treat, 81.
- and in land injuriously affected, 84.
- legality of an interest claimed not determined by assessing tribunal, 222.
- assumed to be correctly stated in claim, 222.
- quantity and quality of owner's interest should be fully described in claim for arbitration, 186.
- in case of jury, 208, 231.
- nature of, acquired by promoters, 23, 138, 303.
- when a deed poll is executed under sect. 76...271.
- compensation only given for a legal or equitable, 124.
- what interests must be included in one hearing before a jury, 206.
- several to be assessed together under Acquisition of Land Act, 1919...326.

INTERFERENCE WITH EASEMENT. *See* EASEMENT.

INTERSECTED LANDS,

- when promoters may compel sale of, under sect. 94...34.
- if either party desire, value of land and cost of communications to be assessed, 34.
- costs of the inquiry, 34.
- when promoters compelled to purchase, 34, 44.
- meaning of words "town" and "built upon," 44, 313.
- under R. Cl. Act, 1845, ss. 68, 69, justices may order accommodation works, 127.
- but only with reference to present uses of land, 127.

INTRODUCTORY HEADINGS, incorporation or exception of portions of L. Cl. Act, 1845, by, 6.

INVESTMENT OF MONEY DEPOSITED IN COURT, 250. *See* DEPOSIT.

ISLE OF MAN, re-investment in lands in, 254.

ISOLATION HOSPITAL, 380.

J.

JUDGE,

- application to, by railway company for trial of question of compensation, 219.
- judge's order equivalent to the issue of warrant to sheriff, 220.

JURISDICTION OF ASSESSING TRIBUNAL. *See* ASSESSING TRIBUNAL.JURY, 205. *See* ASSESSING TRIBUNAL.

- when claims to be settled by, 175, 200, 205.
- summoning, 206.
 - mandamus for, 87, 206.
 - owner of lands entered upon or injuriously affected may give notice of desire for jury, 87, 103, 206.
 - what constitutes entry, 105.
- promoters must within 21 days agree to pay or issue warrant, 208.
- notice of desire for jury to state nature of interest of owner and amount claimed, 208, 231.
 - all conditions precedent must be complied with before summoning jury, 208, 231.
- form of warrant, 208.
- owner is given 21 days after notice to treat before summoning of, 209.
- notice before issuing warrant to summon, 209.
- how warrant attested, 209.
- to whom warrant issued, 209.
- certiorari* to quash proceedings if sheriff interested, 210.
- mandamus to compel sheriff to summon, 211.
- summoning of, 211.
- view by, 212.
- special, 212.
- notice of time and place of inquiry, 213.
- failure of parties to appear, 213.
- procedure at inquiry, 213.
- form of inquisition, 214.
- judgment to be given by sheriff and signed and recorded, 214.
- validity of inquisition, 210, 214, 226.
- jurisdiction of sheriff and jury, 206. *See* ASSESSING TRIBUNAL.
- verdict not limited to amount claimed, 217.
- enforcing payment of amount assessed by jury, 228. *See* ASSESSMENT.
- costs of inquiry before jury, 215, 217. *See* COSTS—OFFER.
- trial of question of compensation in case of railways under direction of a judge, 219.
 - verdict of jury to have same effect as in trial before sheriff, 220.
 - no new trial, 220.

JUSTICES, 177. *See* ASSESSING TRIBUNAL.

- correction of errors in plans on certificate of, 22.
- certificate of, as to subscription of capital, 65.
- assessment of compensation by, in case of entry before purchase, 102.
- in case of wilful entry, penalty recoverable before, 105.
- compensation assessed by, in what cases, 177.
 - under Metropolis Management Acts, 348.

JUSTICES—*continued*.

- qualification of, 180.
- one stipendiary magistrate may act as, 181.
- not to be interested, 181.
- procedure before, 181.
- application for assessment may be made at any time, 182.
- cannot order or enforce payment of their award, 182, 233.
- jurisdiction,
 - none to inquire into title or legality of interest, 178, 222.
 - none to decide right to compensation, 178, 222.
 - none to consider collateral matters, 224.
 - none to enforce their award by distress warrant, 182, 233.
 - to approve sureties, 100.
 - as to severance, 180.
 - to find that no damage sustained, 225.
 - to assess value of land and damage to lands held therewith, 182.
 - to appoint surveyor, 95, 173.
 - mandamus to compel exercise of, 183.
 - as to costs, 183.
 - to order accommodation works in reference to present user of land only, 127.
 - to apportion rents, 288, 297. *See* APPORTIONMENT.
 - under R. Cl. Act, 183.
 - under Waterworks Clauses Act, 183.
- enforcing assessment by, 233. *See* ASSESSMENT.
- setting aside assessment by, by *certiorari*, 237. *See* ASSESSMENT.

L.

LAIRS, acquisition of land for, 380.

LAND SETTLEMENT (FACILITIES) ACT, 1919. *See* APPENDIX, 591.

LAND TAX,

- money deposited in court may be applied in redeeming, 253.
- costs payable by promoters, 253.
- compensation for deficiency in, 300, 357, 366. *See* POOR'S RATE.
- may be redeemed by promoters, 300.

LANDS. *See* INJURIOUSLY AFFECTING.

- subject-matter of law of compensation, 8.
- definition of word in L. Cl. Acts, 8.
- what included, 8, 9, 127.
- easements over, 11. *See* EASEMENT.
- authorised to be taken, 17.
- notices and plans only binding if incorporated, 17.
- ordinary form of clause in special act, 18.
- limit as to area:
 - delineated, 18. *See* DEVIATION—PLANS.
 - meaning of "delineated," 19, 22.
- limits as to purposes of undertaking. *See* PURPOSES OF UNDERTAKING.
- meaning of "undertaking," 4, 25. *See* CONSTRUCTION.
- cannot be taken for collateral purposes, 27.

LANDS—continued.

- can be taken for access to works, 29.
- for accommodation works, 29.
- when purpose authorized, promoters determine whether lands required, 30.
- ownership of land acquired under compulsory powers, 23, 24, 138, 303.
- in certain cases limits do not apply, 32.
- purchase of, by agreement, 53.
- for extraordinary purposes, 32. *See* EXTRAORDINARY PURPOSES.
- required for temporary purposes under R. Cl. Act, 1845...33.
- intersected, 34, 44. *See* INTERSECTED LANDS.
- whole of house, other building, or manufactory to be taken if owner require, 35. *See* HOUSE—MANUFACTORY.
- counter-notice by owner, 40. *See* COUNTER-NOTICE.
- company will be restrained from taking lands *ultra vires*, 45.
- under a public street or highway, 71, 154.
- interest in, when purchased by agreement, 53. *See* AGREEMENT.
- or under compulsory powers, 65. *See* NOTICE TO TREAT.
- fixed by notice to treat, 81.
- omission to purchase through mistake, 68. *See* OMISSION.
- procedure if owner absent or cannot be found, 70, 174. *See* ABSENT OWNER.
- entry on, before payment or deposit of compensation, 89. *See* ENTRY ON LANDS BEFORE PURCHASE.
- assessment of purchase-money or compensation for lands taken, 107. *See* COMPENSATION FOR LANDS TAKEN.
- assessment of compensation for lands injuriously affected, 142. *See* INJURIOUSLY AFFECTING.
- acquired by promoters, nature of interest in, 23, 24, 138, 303.
- alienation of, 304.
- when acquired for extraordinary purposes, 305.
- superfluous, 303. *See* SUPERFLUOUS LANDS.
- conveyance of, 244. *See* CONVEYANCE.
- release from incumbrances, 287.
- definition of, in Acquisition of Land Act, 1919...319.
- ecclesiastical lands, 365, 376.

LANDS CLAUSES ACT, 1845. *See* TABLE OF STATUTES and APPENDIX, 389.

- short title of, 3.
- why enacted, 3.
- incorporation of, 4, 5.
- undertaking to be of a public nature, 4.
- does not apply if special act is inconsistent, 5.
- modifications of, 315, 317.
- effect of Acquisition of Land Act, 1919, upon, 317.

LANDS CLAUSES ACT, 1860. *See* APPENDIX, 435.**LANDS CLAUSES ACT, 1869. *See* APPENDIX, 438.****LANDS CLAUSES (TAXATION OF COSTS) ACT, 1895. *See* APPENDIX, 440.**

- taxation of costs under, 202, 218.

LANDS CLAUSES (UMPIRE) ACT, 1883. *See* APPENDIX, 439.

- appointment of umpire by Board of Trade under, 192.

LEASES. *See* **LESSEE.**

- agreement may be equivalent to, 178.
- effect of non-production of, 180.
- application of money deposited in respect of, 267.
 - lands of life owner subject to lease, 268.
 - life interest in leaseholds, 268.
 - adjustment of rights as between tenant for life and remainderman, 268.
- annuity secured on, to be paid in full, 269.
- re-investment in leaseholds of money deposited in court in respect of freeholds, when allowed, 254.
- apportionment of rent, 298.
- lessee not bound to obtain lessor's consent, 299.
- costs of apportionment, 299.
- lessee, after apportionment, only liable for rent of lands not taken, 299.
- of lands under Metropolis Management Acts, 348.

LEGALITY of interest in lands not within jurisdiction of assessing tribunal, 222.

LESSEE. *And see* **TENANT FOR LIFE.**

- cannot represent interests in reversion, 52.
- when entitled to service of notice to treat, 71, 77.
 - tenant from year to year, or for less than a year, 68, 77, 177. *See* **TENANT FROM YEAR TO YEAR.**
- effect of notice to treat as between, and lessor, 83.
- if residue of term less than a year assessment by justices, 178.
- if residue of term more than year assessment by arbitrators or jury, 178.
- compensation to, 121.
 - for change in nature of tenancy, 121.
 - none for probability of renewal, 123.
 - special covenants in lease, effect of, 124.
- promoters cannot vary covenants, 126.
- is a party willing and able to sell within sect. 92...35.
- premises forming part of one house may be held under different demises, 37.
- effect of non-production of lease by, 180.
- application of deposit between successive owners interested in a leasehold interest, 268. *See* **DEPOSIT.**
- apportionment of rents if lands under lease taken, 298.
- lessee not bound to obtain lessor's consent, 299.
- costs of apportionment, 299.
- after apportionment lessee not liable for rent of lands taken, 299.
- is an adjoining owner to superfluous lands, 310.

LIEN,

- of owner over lands for unpaid purchase-money, 61, 230.
- enforced by sale and appointment of receiver, 61, 231.
 - by injunction in some cases, 62.
- no lien where lands sold in consideration of a rent-charge, 62.
- owner has no lien for costs, 204.
- of arbitrator for fees, 198.

LIGHTHOUSES, acquisition of land for, 380.

LIGHT RAILWAYS ACT, 1896. *See* **APPENDIX, 614.**

LIGHT RAILWAYS ACT, 1912. *See* APPENDIX, 618.

LIGHT RAILWAYS ACTS, 385.

compensation under, 385.

"betterment," 385.

Arbitration Act, 1889, incorporated, 386.

costs, 386.

LIGHTS, ANCIENT, 12, 153. *See* EASEMENT.

LIMITATIONS, STATUTES OF, adverse possession under, 138, 306.

LIMITS,

of area within which promoters may take lands delineated in special act, 18.

of purposes defined in special act, 23.

of deviation, 20.

"LINE OF RAILWAY," 21.

LITIGATION, costs of, between adverse claimants not payable by promoters, 282.

LLOYD'S SIGNAL STATION ACT, 1888...387.

LOCAL AUTHORITY,

form of agreement for purchase by, 54.

consent of Ministry of Health, 59.

may be party absolutely entitled, 257.

application by, for payment out, 265.

powers of, under Public Health Acts, 338.

under Local Government Acts, 345.

under Housing Acts, 356, 361, 364. *See* HOUSING

—TOWN PLANNING.

compensation payable to, under Housing Acts, 365.

acquisition of land for small holdings, &c. by, 371.

LOCAL GOVERNMENT ACT, 1888...345. *See* APPENDIX, 515.

LOCAL GOVERNMENT ACT, 1894...345. *See* APPENDIX, 515.

LOCAL MANAGEMENT ACTS, 346.

LONDON. *See* METROPOLIS MANAGEMENT ACTS.

LORD OF THE MANOR. *See* COMMON LANDS—COPYHOLDS.

compensation to, for enfranchisement, 120, 286.

LUNATIC,

land of, may be sold by committee, 49.

consent necessary, 49.

payment into court may be dispensed with in case of, 249.

payment of dividends on deposit in case of a lunatic, 263.

costs of application as to lands of, 277.

M.

MANDAMUS,

- to promoters to appoint surveyor under sect. 9...58, 174.
- to summon jury, 87, 206.
- to deposit money in bank under sect. 9...174.
 - sects. 69, 71...249.
 - sect. 76...271.
- to take up award, 197.
 - what is a good answer, 199.
- to procure enfranchisement, 286.
- action for, in above cases, 87, 249, 271.
- to justices to assess compensation, 183.
- to master to tax costs, 203, 218.
- to sheriff to summon jury, 211.

MANOR. *See* COMMON LANDS—COPYHOLDS.

MANUFACTORY. *See* HOUSE—COUNTER-NOTICE.

- owner not compelled to sell part of, under L. Cl. Acts, 35.
- only applicable to place where manufacturing process carried on, 39.
- what included in, 39.

MARKET,

- special, 109.
- sale in open, 322.
- where no general, 324.

MARKETS AND FAIRS CLAUSES ACT, 1847...387.

MARRIED WOMAN,

- power of, to sell and convey, 49.
- when absolutely entitled to cash in court, 258.

MEDIUM FILUM VIAE, 21.

MESNE PROFITS, promoters to pay compensation for, where interests omitted to be purchased by mistake, 69.

MESSUAGE, meaning of, in L. Cl. Acts, 8.

METROPOLIS MANAGEMENT ACTS, 346.

- power to take lands for sewers, 346.
- power to execute works, 347.
- power to purchase or lease lands or easements, 348.
- rights acquired on payment of compensation, 347.
- assessment of compensation, 348.
- accommodation works, 349.
- works affecting railways or canals, 349.
- Michael Angelo Taylor's Act, 350.
- compensation under Thames River Prevention of Floods Act, 1879...353.
- arbitration under, 353.

METROPOLITAN PAVING ACT, 1817 (MICHAEL ANGELO TAYLOR'S ACT). *See* APPENDIX, 520.

MICHAEL ANGELO TAYLOR'S ACT, 350. *See* APPENDIX, 520.
 conditions precedent to taking house or land under, 350.
 principles as to compensation, 350.
 where part only of a house taken, 351.
 notice to treat, 352.

MILITARY WORKS. acquisition of land for, 379.

MINES AND MINERALS,
 included in definition of lands in L. Cl. Act, 8, 127.
 right to support by, 95, 128.
 action against owner for working, 129.
 may be purchased in ordinary course, 136.
 in which case their value must be included in deposit
 under sect. 85...95.
 notice to treat should specify if mines to be taken, 73.
 value of, must be assessed when purchased, 129.
 specific law as to sewers, 130.
 railways, 131.
 waterworks, 131, 134.
 compensation for not being able to work, under R. Cl. Act, 131.
 prospective damage to, not assessed, 135.
 what included in, under R. Cl. Act, 1845...136.
 notice of intention to work, 133.
 counter-notice, 133.
 time for, 135.
 compensation for extra cost of working, 135.
 no interest payable on amount awarded, 140.
 tenant for life may be absolutely entitled to payment out of
 compensation for, 258.
 can mines become superfluous lands? 305.
 under Public Health Acts, 344.

MINISTRY OF AGRICULTURE AND FISHERIES,
 consent of, in case of payment out of court, 255.
 application to, as to common lands, 291.
 valuer appointed by, under Small Holdings, &c. Act, 1908...330.
 powers under Small Holdings, &c. Act, 1908...371.

MINISTRY OF HEALTH,
 consent of, to sale of land by municipal corporations, 59.
 not necessary party on application by local authority for pay-
 ment out, 265.
 approval of schemes by, under Public Health Acts, 339.
 powers under Housing Acts, Part I., 360.
 approval of reconstruction scheme by, 363.
 payment of compensation money to local authority with approval
 of, 365.
 powers as to town planning, 366.
 as arbitrators, 368.

MINISTRY OF RECONSTRUCTION, report of Committee on
 Compensation Law, 317.

MISCONDUCT of arbitrator, 189, 241.

MISTAKE,

- in deposited plans, how rectified, 22.
- interests omitted to be purchased by, 68. *See* OMISSION.
- of arbitrator no defence to action on award, 235.
- certiorari* where justices or jury mistake subject-matter, 238.

MORTGAGE, 293.

- interim investment of deposit in, may be allowed, 262.
- purchase by promoters of interest of mortgagee, 293.
- when mortgaged lands of less value than money secured, 294.
- when part only required, 294.
- deposit and vesting in promoters of interests of mortgagee on execution of deed poll, 295.
- reservation of mortgagee's rights against mortgagor, 295.
- compensation if mortgagee paid off, before time limited in deed, 295.
- if mortgagee not treated with, he can enforce his ordinary remedies, 60, 296.
- of business, effect on right to compensation for goodwill, 57, 76, 118, 296.

MORTGAGEE. *See* MORTGAGE.

- equitable, entitled to notice to treat, 75.
- remedies, 60.

MUNICIPAL CORPORATIONS, acquisition of land by, 59, 345.**MUNICIPAL CORPORATIONS ACT, 1882...345.****N.**

“NATURE OF THE INTEREST,” meaning of, 185.

NAVAL WORKS, acquisition of land for, 379.

NEGLIGENCE,

- in execution of statutory powers, 149.
- arbitrator not liable for, 199.

NOTICE OF CLAIM, 326.

- contents of, 326, 328.

NOTICE OF INTENTION TO WORK MINES, 133.

NOTICE TO QUIT, no compensation if lands not required till after expiration of, 122, 179.

NOTICE TO TREAT, 65—88.

- in case of easements, 12.
- effect of counter-notice on, 42.
- effect of, 55.
- not a contract, 56.
- does not require a stamp, 56, 74.
- does not constitute an attachable debt, 56.
- contract is complete when price fixed, 56.
- Statute of Frauds does not apply, 56.

NOTICE TO TREAT—*continued*.

- not necessarily an exercise of compulsory powers, 66, 78.
- necessity for, 67.
- result of failure to give, 67.
- what is and is not in special cases equivalent to, 67.
- not necessary in case of a yearly tenancy, 68, 77, 177.
- in case of lands under a public street or highway, 71.
- form of, 70.
 - no special form required, 70.
 - must be for whole interest of owner, 71.
 - contents of, 73.
- when owner is not bound to give particulars of his estate and claim, 74.
- signature of, 74.
- to whom to be given, 75.
- service of, 77.
- time within which to be served, 78.
- if not duly served, cannot be adopted by owner, 79.
- if served within prescribed time, steps for acquiring lands can be taken subsequently, 79, 84.
- effect of, on promoters, 79.
 - where counter-notice is given under sect. 92...80. *See* COUNTER-NOTICE.
 - where notice is given by commissioners acting for public on behalf of executive, 80.
- withdrawal of, 42, 80.
 - under Acquisition of Land Act, 1919...327, 328.
 - Small Holdings, &c. Act, 1908...374.
- effect of, on owner, 55, 81.
- power of owner to deal with lands after, 83.
- how long binding, 84.
- effect of delay on, 85.
- second notice to same owner may be given, 71, 85.
- subsequent steps, 86.
- promoters compellable to proceed after, 87.
 - owner not entitled to equitable relief, 87.
 - unless there is an equity in his favour, 88.
 - promoters not entitled to an injunction in order to decide owner's right to compensation, 88.
- under Acquisition of Land Act, 1919...328.
- under Michael Angelo Taylor's Act, 352.

NUISANCE,

- where purpose expressly authorized, promoters not liable for, 31, 151.
- liability of promoters in other cases, 31, 151.
- deduction for abating, under Housing Acts, Part I., 357.

O.

OATH,

- arbitrators and umpire may administer, 193.
- evidence on oath is usual but not necessary, 193.

OBSTRUCTION,

- of public highway, gives no claim to compensation unless there is particular damage, 155.
- of private right gives claim to compensation, 152, 154.

OFFER,

- to sell part of a house does not preclude owner from requiring whole to be taken, 36.
- if arbitrators or jury give same or less sum than final offer, each party pays his own costs, 200, 215.
- aggregate sum found by jury is the test, 215.
- final, must be before appointment of last arbitrator, 200.
- offer under sect. 38 is not abrogated by claim for arbitration, 201.
- if lands required, final offer must be made in ten days' notice before summoning jury, 215.
- to be within reasonable time before assessment by jury, 209, 216.
- what is a reasonable time, 216.
- up to final offer, amended offers may be made, 201, 209, 216.
- must be unconditional, 201, 216.
- contents of, 201.
- where claims separable, 202.
- amount of, not admissible in evidence, 115, 200, 216.
- may be accepted at any time before verdict, 217.
- bonâ fide*, evidence of, 324.
- unconditional, of acceptance, 327.
- time for, 328.
- of superfluous lands to parties entitled to pre-emption, 311.

OFFICIAL ARBITRATORS, 320. See ACQUISITION OF LAND Act, 1919.

- panel of, 320.
- qualifications, 320.
- term of office, 320.
- rules as to assessment by, 321.
- procedure before, 325.
- certificate of value by, 332.
- hearing by, under Small Holdings, &c. Act, 1908...372.

OMISSION,

- to purchase interests by mistake, 68.
- when promoters protected, 68.
- promoters to pay compensation and mesne profits, 69.
- when title not disputed, 69.
- promoters pay all costs if unsuccessful, 70.
- in assessing compensation, improvements by promoters not taken into account, 70.
- principles under Part I. of Housing Acts, 360.

OPEN SPACES,

- re-instatement of, under Housing Acts, 366.
- provision of, compensation for injurious affection, 381.

"OTHER BUILDING," extends application of house in sect. 92... 39.

OWNER. See ABSENT OWNER.

- definition of, 47.
- crown not included, 48.
- corporations, 48.
- tenants in tail and for life, 48.
- married women seised in their own right, 49.
- guardians, 49.

OWNER—*continued.*

- committees of lunatics, 49.
- trustees, 50.
 - of a charity, 50.
- executors and administrators, 51.
- all parties in whom estate vested to be joined in a conveyance, 51.
- power of, to represent interest in reversion, &c., 51, 77.
- purchase from, of lands by agreement, 53. *See* AGREEMENT.
- under disability, 51, 57.
 - in case of purchase by agreement from, valuation of two surveyors, 57. *See* SURVEYOR.
- effect on, of notice to treat, 55, 81.
- lien for unpaid purchase-money, 61, 102, 230.
- no lien for costs, 204.
- acquiescence by, in non-service of or invalid notice to treat, 68.
- need not send in a claim unless he desires arbitration, 74.
 - if claim sent in, full particulars of interest should be given, 74.
- counter-notice served by, under sect. 92...40, 80.
- power of, to deal with lands after notice to treat, 83.
- how long notice to treat binds, 84.
- more than one notice may be given to same owner, 85.
- can compel promoters to proceed, 87, 207.
- not entitled to equitable relief, 87.
- promoters cannot enter on lands without consent of, 89. *See* ENTRY ON LANDS BEFORE PURCHASE.
- cannot issue warrant for summoning jury, 206.
- in possession, amount of compensation for, 119.
- award taken up by, 198.
 - arbitrator's fees, 198.
- claim of, assumed to be correct before assessing tribunal, 222.
- can enforce claim by action where promoters fail to summon jury, 208, 231.
- remedies of, as an unpaid vendor, 61, 230.
- action by, for payment of compensation for injury, 233.
- value of lands to, is test of compensation, 108.
- who is, absolutely entitled, 244.
 - conveyance by, 244.
- on failure of, to convey, lands vest in promoters on payment into court and execution of deed poll, 176, 269.
- parties in possession deemed owners until contrary shown, 273.
- adjoining, defined, 310.
- vesting in, of superfluous lands, 309.
- right of pre-emption of, 311.
- rights of, in case of abandonment, &c., 231, 384.
- right of, to site of "unhealthy house," 361.
- limited, under Small Holdings, &c. Act, 374.

P.

PANEL OF OFFICIAL ARBITRATORS, 320.

PARISH COUNCIL,

- acquisition of land by, 345.
- for agricultural purposes, 371.

PARLIAMENTARY DEPOSITS AND BONDS ACT, 1892...384.

See APPENDIX, 613.

PART OF A HOUSE,

- provisions as to taking, 35. *See* HOUSE—COUNTER-NOTICE.
- under Michael Angelo Taylor's Act, 351.
- under Housing Acts, 362.
- under Development Act, 376.

PARTICULARS,

- of estate and interest,
 - to be demanded in notice to treat, 74.
 - owner not compelled to give, 74.
 - unless he desires arbitration, 74, 185.
 - full particulars should be given, 186.
 - must be given in claim under sect. 68...187.

PARTIES TO A CONVEYANCE, who should be, 51.

PARTIES TO A SUIT, service on, of petition or summons for application of deposit, 264.

PAYMASTER-GENERAL. *See* DEPOSIT.

- deposit paid into bank in name of, 96, 248.

PAYMENT INTO AND OUT OF COURT. *See* DEPOSIT.

PERJURY before arbitrators, 193.

PERMANENT IMPROVEMENTS,

- when deposit may be invested in, 255.
- under Settled Land Acts, 250.

PERMANENT USE OF LAND, entry under sects. 85—90 must be for, 93.

PETITION. *See* DEPOSIT—SUMMONS—COSTS.

- by promoters for payment out of deposit under sect. 87...97.
- for application of deposit under sect. 87, by party for whose benefit made, 98.
- for application of deposit under sects. 69, 71 only in special cases, 250, 271.

PLACES OF WORSHIP ENFRANCHISEMENT ACT, 1920... lxxxi.

PLANS,

- required by standing orders of Parliament, 18.
- only effective so far as incorporated in special act, 17.
- "lands delineated on deposited plans," meaning of, 19.
- evidence of experts not admissible to explain, 20.
- mistakes in plans in case of railways, how rectified, 22.
- in other cases powers to rectify errors should be inserted in special act, 23.

POOR'S RATE,

- promoters to make good, and land tax, 300.
- a parochial indemnity created during construction, 300.
- extends to lands taken outside limits of deviation, 300.
- effect of sect. 133 on improvement schemes, 300.
- assessment is on rental value, 301.
- what rates included in, 302.
- making good, under Housing Acts, Part I., 357.
- not otherwise, 366.

POSSESSION,

adverse, 138, 306.

where required from owner having no greater interest than from year to year under sect. 121...177.

where owner refuses to give, promoters may issue warrant to sheriff, 247.

in case of deposit under sects. 76—79, parties in possession deemed to be owners, 273.

who are within this provision, 273.

before completion, 89. *See* ENTRY ON LANDS BEFORE PURCHASE.

POSTMASTER-GENERAL. *See* TELEGRAPHS.

provision of telegraphs by, 378.

land for use of Post Office purchased by, 379.

POST OFFICE, land for purpose of, 379.

POST OFFICE ACT, 1908. *See* APPENDIX, 606.

PRE-EMPTION. *See* SUPERFLUOUS LANDS.

PREROGATIVE, ROYAL, 384.

PRICE. *See* PURCHASE-MONEY.

PRISONS, acquisition of land for, 380.

PRIVACY, no compensation for interference with, 154.

PRIVATE ACT. *See* SPECIAL ACT.

PRIVATE ROAD, compensation for interference with, 152, 154.

PROHIBITION where tribunal not properly constituted, 172.

PROMOTERS,

definition of, 47.

decide if lands are required for purposes of undertaking, 30.

ratification by company of contracts entered into by, 55.

action against, for wrongfully interfering with lands, 60.

compellable to proceed after notice to treat, 87.

powers of, over lands acquired, 138.

cannot exercise powers to vary special covenants, 126.

must take up award, 197.

compellable to pay money into court, 271.

PUBLIC AUTHORITY, what is a, 319.

PUBLIC HEALTH ACT, 1875...338. *See* APPENDIX, 506.

PUBLIC HEALTH ACT, 1875, AMENDMENT ACT, 1883...343.
See APPENDIX, 512.

PUBLIC HEALTH ACTS AMENDMENT ACT, 1907. *See*
APPENDIX, 518.

PUBLIC HEALTH ACTS,

- acquisition of land under, 338.
 - easements, 338.
- powers of local authority, 338.
- incorporation of Lands Clauses Acts, 339.
- lands purchased under, 339.
- lands injuriously affected, 148, 340.
- damage suffered by reason of acts under, 340.
 - what constitutes such damage, 340.
 - principles in assessing damage, 341.
- water rights, 342.
- sewers, 130, 342, 344.
- water mains, 343.
- mines, 130, 343, 344.
- jurisdiction of arbitrator, 344.
- not generally applicable to metropolis, 346.

PUBLIC STREET,

- ownership of land under, 71.
- compensation for injury to sub-soil of, 154.
- obstruction of, 155.
 - no compensation, unless owner suffers particular damage, 156.

PUBLIC UNDERTAKING. *See* UNDERTAKING.

PURCHASE-MONEY,

- lien of owner for unpaid, 61, 230.
- interest on, 139.

PURPOSES OF UNDERTAKING. *See* UNDERTAKING—EXTRA-ORDINARY PURPOSES.

- are defined by special act, 23.
- lands cannot be taken unless there is an intention to complete the undertaking, 26.
 - nor for any works beyond those specified, 26.
 - nor for collateral purposes, 27.
- whether particular works are for, is question of law, 28.
 - case of stations, 29.
 - diversion of a public footpath, 29.
 - accommodation works, 29.
 - making an access to works, 29.
 - making an aqueduct, 29.
- if purposes are authorized by act, promoters determine what lands required, 30.
 - they must act *bonâ fide*, 30.
 - onus is on party alleging want of *bona fides*, 31.
- affidavit of engineer, if sufficient, is evidence that lands are required, 31.

Q.

QUEEN ANNE'S BOUNTY, service of summons for payment out of Court on, lxxxii.

QUEEN'S REMEMBRANCER ACT, 1859. *See* APPENDIX, 500.

QUITTANCES, compensation for, 121, 286.

R.

RAILWAY COMPANIES ACT, 1867...383. *See* APPENDIX, 458.

RAILWAYS. *And see* LIGHT RAILWAYS ACTS.
authorisation by certificate of Board of Trade, 383.
appointment of surveyor, 95, 176, 383.
electrification, 383.
abandonment, 383.
Parliamentary Deposits and Bonds Act, 1892...384.

RAILWAYS (ABANDONMENT) ACTS, 1850 AND 1869...383.

RAILWAYS ACT, 1921...385. *See* APPENDIX, 619.

RAILWAYS CLAUSES CONSOLIDATION ACT, 1845. *See*
APPENDIX, 440.
accommodation works, 127.
provisions as to injuriously affecting, 144.
introduces no new principles of compensation, 145.
compensation for mines and minerals under, 131.
jurisdiction of justices, 183.

RAILWAYS CLAUSES ACT, 1863. *See* APPENDIX, 457.

RAILWAYS (ELECTRICAL POWER) ACT, 1903...383.

RAILWAYS (REGULATION OF) ACT, 1868...219. *See* APPEN-
DIX, 459.
hearing by judge, 219.

RANGES ACT, 1891. *See* APPENDIX, 504.

RATE, POOR'S, compensation for deficiency in, 299. *See* POOR'S
RATE.

RATES AND TOLLS, rent-charge is a charge on, 62.

REAL SECURITIES. *See* DEPOSIT.

REALTY, money deposited under sects. 69, 71, retains character of,
250.

RECEIVER, appointment of, to enforce lien of owner, 61, 231.

RECONSTRUCTION SCHEME, under Housing Acts, Part II.,
363.

RECOVERY OF LANDS, action for, 60, 91, 101.

REFERENCE COMMITTEE, under Acquisition of Land Act, 1919
...319, 320.

REFUSAL OF ARBITRATOR TO ACT, 191.

RE-INSTATEMENT,
principle of, 114, 325.
of commons and open spaces under Housing Acts, 366.

RE-INVESTMENT. *See* DEPOSIT.

REMAINDER OR REVERSION,
 interest in, purchased by agreement, 51.
 or under compulsory powers, 77.
 remainderman, &c. represented by owner under sect. 7...51, 77.
 amount of compensation for interests in, 119.
 protection of remainderman, &c. by deposit of purchase-money
 or compensation, 248. *See* DEPOSIT.
 remainderman, &c. cannot apply under sects. 69—71...252.
 service of petition or summons on remainderman, 263, 268.
 appearance of remainderman, 265.
 adjustment of interests between owner immediately entitled and
 remainderman if estate less than fee simple, 268.

REMITTING AWARD. *See* AWARD.

REMOTENESS OF DAMAGE, 118.

REMOVAL, costs of, to be included in compensation, 116.

RENT. *See* APPORTIONMENT.
 increased, to be included in compensation, 117.
 in case of compulsory hiring, 373.

RENT-CHARGE,
 sale of lands in consideration of, 62.
 charged on tolls and rates, 62.
 recoverable by action or distress, 62.
 no lien over lands for arrears of, 62.
 owner of, entitled to priority over other creditors, 63.
 form of order, 63.
 release of lands from, 297.
 apportionment of, if part only of lands required, 297.
 on default of release by party entitled, deed-poll, 297.
 continues over land not taken, 298.

REPAIRS, re-investment of deposit in, not generally allowed, 255.

RESTRICTIVE COVENANTS, compensation for breach of, 156.

RESUMPTION OF LAND by owner under Small Holdings, &c.
 Act, 1908...374.

RETURNS, as evidence, 322.

REVERSION. *See* REMAINDER OR REVERSION.

REVOCATION,
 of notice to treat. *See* NOTICE TO TREAT.
 of appointment of arbitrator, 190, 191.
 consent of owner to entry not revocable, 90.

RIGHT OF PRE-EMPTION. *See* PRE-EMPTION.

RIGHT TO COMPENSATION,
 not determined by assessing tribunal, 222. *See* ASSESSING
 TRIBUNAL.
 injunction not granted to try, 88, 107.

ROAD. *See* PRIVATE ROAD—PUBLIC STREET—HIGHWAY.

ROAD BOARD, 376.

ROAD IMPROVEMENT, 375. *See* DEVELOPMENT OF LAND.

ROYAL PREROGATIVE, extent of, 334.

RULES FOR ASSESSMENT OF COMPENSATION under Acquisition of Land Act, 1919...321.

S.

SCHEME OF ARRANGEMENT, under Railway Companies Act, 1867, rights of landowners in, 63.

SEAL,

contract of promoters under, for purchase of lands, 53, 54.
appointment of agent under, 54.

SECURITY, DEPOSIT BY WAY OF, in case of entry before purchase, 94.

SERVICE OF NOTICE TO TREAT. *See* NOTICE TO TREAT.

SERVICE OF SUMMONS OR PETITION, on application in respect of money deposited in court, 263, 264, 268.

SETTING ASIDE AWARD. *See* AWARD.

SETTLED LAND ACTS, 1882 to 1890,
investments authorized by, 259, 280.
costs of, 277, 280.

SEVERANCE,

compensation for, 162.
when assessment by justices, 180.
accommodation works, 127.

SEWERS,

under Public Health Acts, 130, 342, 343.
injuriously affecting, 153.
provisions of Metropolis Management Acts as to, 346.

SHERIFF, 205. *See* JURY.

warrant to summon jury issued by promoters to, 206, 208.
if sheriff interested, to a coroner, 209.
definition of, 210.
includes under-sheriff or deputy, 210.
if lands in different places, sheriff of any place where they are situated, 210.
what constitutes interest, 210.
if interested, proceedings quashed by *certiorari*, 210.
objection on ground of interest may be waived by consent, 210.
not if party ignorant of interest, 210.
summoning of jury, 211.
mandamus to compel, 211.

SHERIFF—*continued*.

- must order view at request of either party, 212.
- may summon witnesses, 213.
- penalty for neglect of duty, 214.
- judgment to be given and signed by, 214.
- promoters may issue warrant to, when owner refuses to give up possession, 247.

SHOOTING, rights of, no compensation for injury to, 10, 153.

SITES OF PLACES OF WORSHIP ENFRANCHISEMENT ACT, 1920...lxxxi.

SMALL HOLDINGS. *See* AGRICULTURE.

SMALL HOLDINGS AND ALLOTMENTS ACT, 1908...370. *See* APPENDIX, 567.

application of Acquisition of Land Act, 1919, to, 330, 370.

SMALL HOLDING COLONIES ACT, 1916. *See* APPENDIX, 597.

SPECIAL ACT,

- incorporation into, of L. Cl. Acts, 4.
- usual clause defining limits of lands, 18.
- superfluous lands clauses, 314.
- construction of, 25, 319. *See* CONSTRUCTION.

“SPECIAL ADAPTABILITY,”

- meaning of, 111.
- under Acquisition of Land Act, 1919...322.

SPECIAL CASE,

- stated by parties by agreement, 235.
- stated by arbitrators during proceedings, 194, 235, 243.
- court may order, 195, 235.
- award stated by arbitrators in form of, 195, 235, 243.
- under Acquisition of Land Act, 1919...329.

SPECIAL COVENANTS,

- effect of, 124.
- when inconsistent with statutory powers, 126.
- when not inconsistent, 126.
- promoters cannot vary, 126.

SPECIAL JURY, 212. *See* JURY.

SPECIFIC PERFORMANCE,

- enforced when contract for purchase of lands complete, 59.
- in case of accommodation works, 58, 59.
- price must first be fixed, 60, 229.
- in all cases after notice to treat, if price fixed by agreement or an assessing tribunal, 228.
- at suit of either party, 228.
- what is a good defence, 228.
- of an agreement for compensation for commonable rights may be decreed, 290.

SPORTING RIGHTS, compensation for, 10, 153.

STAMP, notice to treat does not require, 56, 74.

STATIONS, lands may be taken for railway, 29.

STATUTE, construction of. *See* CONSTRUCTION.

STATUTE OF FRAUDS does not apply to notice to treat, 56.

STATUTES OF LIMITATIONS, adverse possession under, 138, 306.

“STATUTORY BARGAIN,” 319.

STATUTORY POWERS, action for excess or wanton use of, 151, 162.

STIPENDIARY MAGISTRATE,
has same powers as two justices, 181.
powers under Telegraph Acts, 379.

STREAMS, taking of, under Waterworks Clauses Act, 14, 145.

STREET. *See* PUBLIC STREET—HIGHWAY.

STRUCTURAL DAMAGE, compensation for, 152.

SUBMISSION TO ARBITRATION. *See* ARBITRATION.
appointment of arbitrator is a submission to arbitration, 190, 191.
has effect of a rule of court, 191.
title assumed to be correctly stated in, 222.

SUBPŒNA to witness in arbitration, 193.

SUBSIDENCE DUE TO BRINE PUMPING, compensation for, 387.

SUB-SOIL,
ownership of, 71.
when notice to treat necessary for, 71.
compensation for damage to, of street, 154.

SUMMARY JURISDICTION ACTS,
procedure of, applicable on inquiry before justices, 182.
but justices cannot enforce payment by distress warrant, 182.

SUMMONS AT CHAMBERS,
to deal with money deposited, 250.
in all cases where there has been a judgment or order declaring rights, 250.
in all cases of application for interim or permanent investments or payment of dividends, 251.
in applications for payment out of court of sums less than 1,000*l.*, 251.
who should apply, 252.
affidavit on, 252.
service of summons, 263, 268.
appearance of parties served, 265.
in case of absent owner, 271.

SUPERFLUOUS LANDS, 303.

- lands subject to compulsory powers may become superfluous, 305.
- although purchased by agreement, 305.
- to what lands sects. 127—131 apply, 305.
- mines, 305.
- definition of, 306.
- whether particular lands are, is a question of fact, 306.
- to a great extent a question of *bona fides*, 308.
- how lands become superfluous, 308.
- time at which to decide if lands are superfluous, 308.
- sale of superfluous lands, 309.
- rights of purchaser of, 309.
- if not sold, vest in adjoining owners, 309.
- vesting is absolute and automatic, 310.
- adjoining owners, who are, 310.
- division of lands among, 311.
- right of pre-emption of superfluous lands, 311.
- time at which right of pre-emption arises, 311.
- form of decree on application of an adjoining owner, 312.
- no right of pre-emption of lands in a town, built upon, or used for building purposes, 312.
- time within which right of pre-emption to be claimed, 313.
- if price not agreed, arbitration, 188, 313.
- this not an arbitration under sects. 25—44 of L. Cl. Act, 188, 313.
- conveyance by promoters, 313.
- incorporation of superfluous lands clauses in special acts, 314.
- where undertaking abandoned, 304.
- under Small Holdings, &c. Act, 1908...375.

SUPPORT, RIGHT TO. *See* MINES AND MINERALS—SEWERS.

SURETIES, approval of, to bond, 100, 383.

SURVEYING, entry on lands for purpose of, 89.

SURVEYORS, 173.

- procedure as to and by,
 - on purchase by agreement from party under disability, 58, 173.
 - requirements of sect. 9 must be strictly complied with, 58, 174.
 - mandamus to compel appointment, 58, 174.
- if owner absent, or cannot be found, or does not appear on inquiry before jury, 70, 174.
- sufficiency of valuation may be submitted to arbitration, 175, 186, 237.
- valuation of amount of security under sects. 85, 88...95, 176.
- of commonable rights, 176, 292.
- in case of railways, appointment by Board of Trade on notice, 95, 176, 383.
- an impartial person to be appointed, 58, 176.
- declaration of impartiality, 175.
- declaration of correctness attached to valuation in case of parties under disability, 173.
- valuation includes value of land and damage, 173.
- sufficiency of valuation in case of absent party may be submitted to arbitration, 175, 186, 237.
- costs of, 177, 187.
- when, may act as arbitrators, 189.

T.

"TAKING," meaning of, in sect. 68, L. Cl. Act, 104.

TAXATION OF COSTS. *See* COSTS.

- by a master in case of arbitrators, 202.
 - not open to review before court, 203.
- by a master of an inquiry before a jury, 217.
 - not open to review before court, 218.
- mandamus to a master to tax costs, 203, 218.
 - order for, in action to enforce costs, 203.
- costs of a conveyance taxed by a taxing-master in Chancery, 246.
- under Acquisition of Land Act, 1919...327.

TAXING AUTHORITIES, compensation to, 299. *See* POOR'S RATE.

TELEGRAPH ACT, 1878. *See* APPENDIX, 600.

TELEGRAPH (CONSTRUCTION) ACT, 1908. *See* APPENDIX, 604.

TELEGRAPH (CONSTRUCTION) ACT, 1916. *See* APPENDIX, 604.

TELEGRAPHS, 378.

- compensation for placing, 378.
- difference as to placing, 378.
 - arbitration as to, 379.
- right of entry in case of emergency to place, 379.

TEMPORARY PURPOSES, lands required for, in case of railways, 33.

"TEN PER CENT." allowance for compulsory purchase, under L. Cl. Acts, 141.
not under Acquisition of Land Act, 1919...322.

TENANT FOR LIFE. *See* DEPOSIT.

- power of, to sell and convey, 48.
 - to represent interests in remainder or reversion, 51, 77.
- repayment to, of money chargeable on inheritance, 256.
- compensation in respect of personal injury or inconvenience, 267.
- costs of, in opposing a bill, 267.
- rights of, in a terminable estate, 268.
- compensation for enfranchisement not to be paid to, 287.
- in some cases is absolutely entitled to payment of compensation-money for minerals, 258.

TENANT FOR YEARS. *See* LESSEE.

TENANT FROM YEAR TO YEAR,

- no notice to treat necessary under sect. 121...68, 77, 177.
- no claim if notice to quit duly given, 122, 179.
- if possession of lands required from, compensation assessed by two justices, 177.
- to what tenancies sect. 121 applies, 178.

TENANT FROM YEAR TO YEAR—*continued*.

- nature of tenancy fixed by notice of intention to take, 179.
- actual entry, 180.
- if claim for injury exceeds 50%, entitled to arbitration or jury, 177, 185.
- compensation for change in nature of tenancy, 121.
- no compensation for probability of continuance of tenancy, 123.

TENANTS IN COMMON, separate bonds should be given in case of, 100.

TENANT IN TAIL,

- power of, to sell and convey, 48.
- although estates inalienably settled by Parliament, 48.
- to represent interests in reversion, 51, 77.
- as a party absolutely entitled, 259.

TENEMENTS, meaning of, in L. Cl. Acts, 8.

TENURE, meaning of words "of any tenure," 8.

TERMOR is an owner within sect. 92...35. *See* LEASE.

TERRITORIAL FORCES, acquisition of land for, 380.

TITHE ACT, 1878...10.

TITHES,

- compensation for interference with, 9, 10.
- under statute 37 Hen. 8, c. 12...10.
- owner of an ordinary tithe rent-charge is not entitled to a notice to treat, 75, 76.

TITLE,

- doubtful, in case of absent owner, 175.
- in case of dispute as to, award not enforced summarily, 198, 233.
- not determined by assessing tribunals, 172, 222.
- assumed to be correctly claimed, 222.
- question of, not prejudiced by assessment of compensation, 225.
- no specific performance if title claimed cannot be made good, 229.
- can be disputed in action for payment of compensation, 231.
- costs of conveyance include costs of deducing, 245.
- or of registering, if required, 246.
- not conditional on payment into court under sects. 69, 71...249.
- if not shown, promoters may deposit purchase-money, 269.
- or petition for application of purchase-money court decides, 272.
- parties in possession deemed owners until contrary is shown, 273.
- this does not apply if title really disputed, 274.
- in case of lands omitted to be purchased by mistake, 69. *See* OMISSION.

TOLLS AND RATES, rent-charge is a charge on, 62.

TOWN,

- defined, 44.
- intersected lands under sect. 94 include lands in a town, 34.
- no right of pre-emption to lands in a town, 312.

TOWN PLANNING, 366.

- schemes, 366.
- injuriously affected property, 367.
- betterment, 367.
- compensation for lands taken, 367.
- determination of matters by Ministry of Health, 368.
- garden cities, 369.

TOWNS IMPROVEMENT CLAUSES ACT, 1847...369.

TRADE FIXTURES,

- included under manufactory, 39.
- value of, to be assessed, 116.

TRUSTEES,

- power of, to sell and convey, 50, 244.
 - in case of charities, 50, 59, 257.
- when trustees should be parties to a conveyance, 51.
- service on, of notice to treat, 76.
- where trustees have a discretionary power of sale, 50, 76, 244, 256.
- payment to, of sums deposited between 200*l.* and 20*l.*, 248.
 - appointment of, in such a case, 248.
- service of petition or summons on, 264.
- with absolute power of sale, are persons absolutely entitled under L. Cl. Acts, 256.
- of charities may be absolutely entitled, 257.

TUNNEL. *See* EASEMENT.

- owner cannot be compelled to grant a right of tunnelling, 15, 40.
- if made under part of house, the whole if required must be taken, 40.
- notice to treat required for, 15, 71, 93.
- adverse possession of lands over, 138, 306.

U.

ULTRA VIRES, taking of land, restrained by injunction, 45.UMPIRE. *See* ARBITRATOR—ASSESSING TRIBUNAL—AWARD.

- appointed by arbitrators in writing, 192.
- in case of neglect, by Board of Trade, 192.
- may be appointed more than twenty-one days after appointment of last arbitrator, 192.
- should not be appointed by lot, 192.
- declaration of impartiality, 189.
- control over proceedings, 193.

UNDER-SHERIFF,

- included under definition of sheriff, 210.
- interest of, does not disqualify sheriff, 211.

UNDERTAKING. *See* PURPOSES OF UNDERTAKING.
 meaning of, 4, 25.
 limited to undertakings of public or quasi-public nature, 4.
 there must be an intention to complete, before exercise of compulsory powers, 26.
 cannot include works other than specified in special act, 26.
 abandonment of, 63, 304, 383.

UNHEALTHY AREAS. *See* HOUSING.
 under Housing Acts, 355.

UNHEALTHY DWELLING-HOUSES. *See* HOUSING.
 under Housing Acts, 361.

UNIVERSITIES AND COLLEGE ESTATES ACTS, 255, 259.

UNPAID VENDOR,
 owner of lands taken has remedies of, 61, 102, 230.
 except where lands sold for rent-charge, 62.
 rights of, under a scheme of arrangement, 63.
 in case of an abandonment, 63, 383.

URBAN AUTHORITY, agreement to purchase land, form of, 54.

URBAN COUNCIL, acquisition of land for small holdings, &c. by, 371.

USE OF PREMISES,
 contrary to law, 324.
 in manner detrimental to health, 324.

V.

VALUATION. *See* SURVEYOR.

VALUER, appointed under Small Holdings, &c. Act, 1908...330.

VENDOR AND PURCHASER, how far position of, created by notice to treat, 56, 79.

VIEW,
 ordered on request of either party, 212.
 by official arbitrator, 325.

W.

WAIVER of notice to treat by acquiescence, 68.

WARRANT. *See* JURY—SHERIFF.
 only promoters can issue, 206.
 mandamus for issue of, 206.
 if not issued within twenty-one days owner entitled to claim, 208.
 if lands required, ten days' notice before issue of, 209.
 but not if lands entered upon or injuriously affected, 209.

WARRANT—*continued*.

- how to be attested, 209.

- to whom to be issued, 209.

- form of, 208.

- of distress issued by justices for costs, 218.

- not for amount of compensation, 182, 233.

- to sheriff to deliver possession when owner refuses, 247.

WASTE LANDS, 289. *See* COMMON LANDS.

WATER,

- taking of, 14, 145.

- interference with flow of, 152, 153.

- under Public Health Acts, 342.

- acquisition of rights of, under Housing Acts, 366.

WATER MAINS, under Public Health Acts, 343.

WATERWORKS CLAUSES ACT, 1847. *See* APPENDIX, 460.

- taking of streams under, 14, 145.

- easements, 14.

- wider principle of compensation under, 145, 147.

- compensation for mines and minerals under, 131, 134.

- injurious affection under, 145, 160.

- jurisdiction of justices, 183.

- mining clauses, incorporated by Public Health Act, 1883...130, 343.

WELSH COMMISSIONERS, service of summons for payment out of Court on, lxxxi.

WILFUL ENTRY, 105. *See* ENTRY.

WILFUL NEGLIGENCE to make good title, 282.

WILFUL REFUSAL to receive purchase-money or convey lands, 281.

WINDING-UP PETITION, owner cannot file, for non-payment of purchase-money, 230.

WITHDRAWAL of notice to treat. *See* NOTICE TO TREAT.

WITNESS,

- power of arbitrators to examine on oath, 193.

- either party may subpoena, 193.

- penalties for disobedience or perjury, 193.

- sheriff to summon, at request of either party, 213.

- penalty for non-attendance, 213.

- capacity of arbitrator as, 199, 236.

WORKING CLASS LODGING HOUSES, 364.

APRIL, 1922.

**A
SELECTION
OF
RECENT LAW WORKS**

**PUBLISHED BY
STEVENS & SONS, LIMITED,
119 & 120, CHANCERY LANE, LONDON, W.C.2.**

**** A Discount of 20 per cent. off all new Books
(except where marked *net*) for Cash with Order.
(Carriage or Postage extra.)**

Complete Catalogue of New and Secondhand Law Works post free.

**A B C GUIDE TO THE PRACTICE OF THE SUPREME
COURT, 1922.** *Net, 8s. 6d.*

ACCOUNTS.—Hodsoll's Practical Accounts for Execu-
tors and Trustees. 1914. *Net, 10s. 6d.*
"Invaluable to law and accountancy students, solicitors and
others."—*Law Times*.

ADMIRALTY.—Roscoe's Admiralty Practice. Fourth
Edition. (Incorporating Williams and Bruce's Admi-
ralty Practice.) 1920. *Net, 2l. 2s.*

ADVOCACY.—Harris' Hints on Advocacy.—Fifteenth
Edition. By J. H. WATTS, Barrister-at-Law. 1920.
10s.

AGRICULTURAL LAW.—Spencer's Agricultural Hold-
ing Acts, 1908 to 1921. Sixth Edition. *Net, 12s. 6d.*

Spencer's Small Holdings and Allotments Acts.—
With Notes. Second Edition. 1920. *10s.*

ANNUAL COUNTY COURTS PRACTICE, 1922. *Net, 2l.*

"It admirably fulfils the essential requisites of a practice
book."—*Law Times*.

ANNUAL DIGEST, 1921. *Net, 15s.*

ANNUAL PRACTICE, 1922. *Net, 2l.*
"A book which every practising English lawyer must have."
—*Law Quarterly Review*.

ANNUAL STATUTES, 1921. *Net, 1l. 1s.*

ARBITRATION.—**Russell on the Power and Duty of an Arbitrator.**—Tenth Edition. By A. A. HUDSON, K.C. 1919. *Net, 2l. 2s.*

BANKING.—**Hart's Law of Banking.**—Third Edition. 1914. *1l. 12s.*

BANKRUPTCY.—**Aggs' Handbook on Bankruptcy.** 1915. *Net, 4s.*

Lawrance's Deeds of Arrangement, with Precedents.
Ninth Edition. By SYDNEY E. WILLIAMS. 1922. *Net, 10s.*

“Concise, practical, and reliable.”—*Law Times.*

Williams' Law and Practice in Bankruptcy.—
Twelfth Edition. By W. N. STABLE. 1921. *Net, 2l. 10s.*

BILLS OF EXCHANGE.—**Chalmers' Bills of Exchange.**
Eighth Edition. By SIR M. D. CHALMERS, K.C.B.,
C.S.I., and KENNETH CHALMERS. 1919. *1l. 10s.*

BUILDING SOCIETIES.—**Wurtzburg's Law relating to Building Societies.**—Fifth Edition. 1920. *20s.*

CARRIERS.—**Carver's Treatise on the Law relating to the Carriage of Goods by Sea.**—Sixth Edition. By JAMES S. HENDERSON. 1918. *Net, 2l. 2s.*

“The standard modern book on carriage by sea.”—*Law Quarterly.*

Disney's Law of Carriage by Railway.—Fifth Edition. 1921. *Net, 12s. 6d.*

“Can be cordially recommended to the lawyer.”—*Law Times.*

CHANCERY.—**Daniell's Chancery Practice.**—Eighth Edition. By SYDNEY E. WILLIAMS and F. GUTHRIE-SMITH. 2 vols. 1914. *5l. 5s*

Daniell's Chancery Forms and Precedents.—Sixth Edition. By R. WHITE, F. E. W. NICHOLS and H. G. GARRETT. 1914. *2l. 10s.*

“The two volumes on Practice and the one volume of Forms constitute together a most valuable work on the practice of the Chancery Division.”—*Law Quarterly Review.*

CHECKWEIGHING.—**Cockburn's Law of Checkweighing.** 1919. *7s. 6d.*

COLLISIONS AT SEA.—**Marsden's Collisions at Sea.**—Seventh Edition. By MARCUS W. SLADE. 1919. *1l. 15s.*

“Indispensable for Admiralty practitioners.”—*Law Journal.*

Roscoe's Measure of Damages in Action of Maritime Collisions.—Second Edition. 1920. *Net, 12s. 6d.*

COMPANY LAW.—Palmer's Company Law. A Practical Handbook for Lawyers and Business Men. Eleventh Edition. By ALFRED F. TOPHAM. 1921. *Net, 25s.*

Palmer's Company Precedents.

Part I. General Forms. Twelfth Edition.

(In the press.)

Part II. Winding up. Twelfth Edition. 1921. *Net, 3l.*

Part III. Debentures. Twelfth Edition. 1920. *Net, 1l. 15s.*

Palmer's Private Companies.—Thirty-third Edition. 1921. *Net, 1s. 6d.*

Palmer's Shareholders', Directors', and Voluntary Liquidators' Legal Companion.—Thirty-first Edition. 1921. *Net, 4s.*

Sutcliffe's Company Law. 1920. *Net, 12s. 6d.*

CONFLICT OF LAWS.—Dicey's Digest of the Law of England with reference to the Conflict of Laws.—Third Edition. By A. V. DICEY, K.C., and A. BERRIE-DALE KEITH. 1922. *Net, 2l. 5s.*

CONTRACTS.—Addison's Law of Contracts.—Eleventh Edition. By W. E. GORDON and J. RITCHIE. 1911. *2l. 2s.*

Leake's Principles of the Law of Contracts.—Seventh Edition. By A. E. RANDALL. 1921. *Net, 2l. 10s.*

"A full and reliable guide to the principles of the English Law of Contract."—*Law Journal*.

Pollock's Principles of Contract.—Ninth Edition. 1921. *Net, 2l. 2s.*

"There is no book on the English Law of Contract which deals so lucidly and yet so comprehensively as this."—*Law Journal*.

CONVEYANCING.—Armitage's Short Conveyancing Forms. 1918. *Net, 12s. 6d.*

Prideaux's Forms and Precedents in Conveyancing.—Twenty-first Edition. By B. L. CHERRY and R. BEDDINGTON. 2 vols. 1913. *Net, 5l.*

"'Prideaux' is the best work on Conveyancing."—*Law Journal*.

CORPORATION PROFITS TAX.—The Tax explained and Annotated. By CYRIL L. KING. 1921. *Net, 2s. 6d.*

CRIMINAL LAW.—Denman's Digest of Criminal Law.—"ARCHBOLD abridged and alphabetically arranged." Second Edition. 1918. *Net, 1l. 5s.*

Roscoe's Digest of the Law of Evidence and the Practice in Criminal Cases.—Fifteenth Edition. By H. COHEN. 1921. *3l. 3s.*

CRIMINAL LAW—continued.

Russell's Treatise on Crimes and Misdemeanors.—
Seventh Edition. By W. F. CRAIES and L. W. KER-
SHAW. 3 vols. 1909. 4*l.* 10*s.*

"Indispensable in every Court of criminal justice here and in
our colonies."—*The Times*.

Warburton's Leading Cases in Criminal Law.—Fifth
Edition. By the late H. WARBURTON and CLAUDE H.
GRUNDY. 1921. 1*l.*

DEATH DUTIES.—Harman's Finance Act, 1894, and
subsequent legislation as to the Death Duties.—
Fourth Edition. 1921. 10*s.* 6*d.*

Webster-Brown's Finance Acts.—(Estate and other
Death Duties.) Fourth Edition. 1921. *Net*, 1*l.* 5*s.*
"Contains much practical advice which will be of substantial
assistance to practitioners."—*The Times*.

DIARY.—The Lawyer's Companion and Diary, 1922.
Net, 5*s.* to 13*s.*

DICTIONARY.—Wharton's Law Lexicon.—Twelfth Edi-
tion. By E. A. WURTZBURG. 1916. 2*l.* 10*s.*
"The most useful of legal works."—*Law Journal*.

The Pocket Law Lexicon.—Fifth Edition. 1921.
Net, 10*s.*

"A wonderful little legal Dictionary."—*Law Students' Journal*.

DIGEST.—Mews' Digest to End of 1920. *Net*, 15*l.* 5*s.*
Full Particulars on application.

DIVORCE.—Browne and Watts' Law and Practice in
Divorce, &c.; incorporating Oakley's Divorce
Practice.—Ninth Edition. By J. H. WATTS. 1921.
Net, 2*l.* 2*s.*

EASEMENTS.—Goddard's Treatise on the Law of Ease-
ments.—Eighth Edition. 1921. *Net*, 1*l.* 10*s.*
"Nowhere has the subject been treated so exhaustively."—*Law
Times*.

ELECTIONS.—Rogers' Parliamentary Elections and
Petitions.—Nineteenth Edition. With Addenda, March,
1922. *Net*, 1*l.* 5*s.*

ELECTRICITY.—Knowles' Law relating to Electricity.
—In two Parts. Part I., Electric Lighting and Power;
Part II., Electric Traction. 1911. 2*l.* 10*s.*
*The Parts may be had separately, each 1*l.* 5*s.* net.*

EQUITY.—Seton's Forms of Judgments and Orders.
With Practical Notes. Seventh Edition. By A. R.
INGPEN, K.C., F. T. BLOXAM and H. G. GARRETT.
3 vols. 1912. 6*l.*

"A most valuable and indispensable work."—*Law Journal*.

**Smith's Practical Exposition of the Principles of
Equity.**—Fifth Edition. 1914. 21*s.*

"Useful to both practitioner and student alike."—*Law Stu-
dents' Journal*.

EXCESS PROFITS.—Sutcliffe's Excess Profits Duty.

With Supplement bringing the Work down to 1920. 10s.

* * *The Supplement may be had separately, Net, 2s. 6d.*

EXECUTORS.—Ingpen's Law relating to Executors and Administrators.—Second Edition. 1914. Net, 1l. 5s.

Walker's Law relating to Executors and Administrators.—Fifth Edition. 1920. Net, 1l. 5s.

Williams' Law of Executors and Administrators.—Eleventh Edition. By S. E. WILLIAMS. 2 vols. 1921. Net, 5l.

"This book—the standard work on its subject—is a storehouse of learning on every point of administration law."—*Law Journal*.

FARM.—Hopkins' Farm Law.—By T. M. HOPKINS, Barrister-at-Law. 1920. Net, 3s. 6d.

FORMS.—Bowstead's Collection of Forms and Precedents other than Conveyancing, Company, Local Government and Practice Forms.—2 vols. 1914. Net, 2l. 10s.

Chitty's Forms of Civil Proceedings in the King's Bench Division.—Fourteenth Edition. By T. W. CHITTY, E. H. CHAPMAN and P. CLARK. 1912. 2l. 10s.

"An indispensable adjunct to every working lawyer's library."—*Law Journal*.

Daniell's Chancery Forms and Precedents.—Sixth Edition. By R. WHITE, F. E. W. NICHOLS and H. G. GARRETT. 1914. 2l. 10s.

"The standard work on Chancery Procedure."—*Law Quarterly Review*.

HIRE-PURCHASE SYSTEM.—Russell's Practical Manual of Hire-Trade Law.—Fifth Edition. With Supplement to June, 1920. Net, 10s. 6d.

* * *The Supplement may be had separately, Net, 3s. 6d.*

INCOME TAX.—Aggs' Income Tax, 1918. With Full Notes and an Introduction and Index. 1919. Net, 12s. 6d.

Konstam on the Law of Income Tax. With Supplement (Oct., 1921). 1921. Net, 1l. 15s.

INDUSTRIAL COURTS.—Stoker's Industrial Courts Act, and the kindred Acts, and Rules.—By W. H. STOKER. 1920. Net, 3s. 6d.

INSURANCE.—Arnould's Law of Marine Insurance and Average.—Tenth Edition. By E. L. DE HART and R. I. SIMEY. 2 Vols. 1921. Net, 5l.

INTERNATIONAL LAW.—Anthonis' Sanctions of International Law. 1917. Net, 1s.

Wheaton's Elements of International Law.—Fifth English Edition. By COLEMAN PHILLIPSON, LL.D. 1916. 2l.

"Wheaton stands too high for criticism."—*Law Times*.

LANDLORD AND TENANT.—Woodfall's Law of Landlord and Tenant.—Twentieth Edition. 1921.

Net, 2*l.* 15*s.*

"Woodfall is really indispensable to the practising lawyer, of whatever degree he may be."—*Law Journal*.

LAW LIST, 1922.

Net, 12*s.* 6*d.*

LEADING CASES.—Caporn's Selected Cases on the Law of Contracts.—Third Edition. 1920. 25*s.*

Randall's Selection of Leading Cases in Equity.—1912. 10*s.* 6*d.*

"One of the foremost, if not the best, of Equity case books."—*Law Students' Journal*.

Shirley's Selection of Leading Cases in the Common Law.—Ninth Edition, By R. WATSON. 1913. 18*s.*

Warburton's Leading Cases in Criminal Law.—Fifth Edition. By the late H. WARBURTON and CLAUDE H. GRUNDY. 1921. 1*l.*

LEAGUE OF NATIONS.—Pollock on the League of Nations.—By Rt. Hon. Sir FREDERICK POLLOCK, Bt., K.C. Second Edition. 1922. *Net*, 16*s.*

LEGAL HISTORY.—Deans' Student's Legal History.—Fourth Edition. 1921. 15*s.*

"There is no better short introduction to the study of the law."—*Law Notes*.

LIBEL AND SLANDER.—Ball's Law of Libel as affecting Newspapers and Journalists.—1912. 6*s.*

"A well-arranged and well-executed work."—*Law Journal*.

Odgers' Digest of the Law of Libel and Slander.—Fifth Edition. 1911. 1*l.* 18*s.*

"Should be found on the shelves of every practitioner."—*Law Students' Journal*.

LUNACY.—Heywood and Massey's Lunacy Practice.—Fifth Edition. 1920. 1*l.* 10*s.*

MENTAL DEFICIENCY.—Davey's Law relating to the Mentally Defective.—Second Edition. 1914. 10*s.*

"This admirably arranged and handy book."—*Law Journal*.

MILITARY LAW.—O'Sullivan on Military Law and the Supremacy of the Civil Courts. Being the Judgment of Mr. Justice McCardie in *Heddon v. Evans*. Edited with Notes and an Introduction by RICHARD O'SULLIVAN. 1921. *Net*, 7*s.* 6*d.*

MORTGAGE.—Coote's Treatise on the Law of Mortgages.—Eighth Edition. By SYDNEY E. WILLIAMS. 2 vols. 1912. *Net, 3l. 3s.*

NOTARY.—Brooke's Office and Practice of a Notary.—Seventh Edition. By J. CRANSTOUN. 1913. *1l. 10s.*

OBLIGATIONS.—Walton on the Egyptian Law of Obligations. A Comparative Study, with special reference to the French and the English Law. 2 Vols. 1920. *Net, 2l. 10s.*

PARTNERSHIP.—Pollock's Digest of the Law of Partnership.—Eleventh Edition. 1920. *15s.*

PATENTS.—Thompson's Hand-book of Patent Law of all Countries.—Eighteenth Edition. 1920. *Net, 6s.*
* * *British Portion only. Net, 1s.*

PEACE TREATY.—Picciotto and Wort's Treaty of Peace with Germany: Clauses affecting Mercantile Law. 1919. *Net, 6s.*

PLEADING.—Bullen and Leake's Precedents of Pleadings.—Seventh Edition. By W. BLAKE ODGERS, K.C., and WALTER BLAKE ODGERS. 1915. *2l. 10s.*
"The standard work on modern pleading."—*Law Journal.*

Odgers' Principles of Pleading and Practice.—Eighth Edition. 1918. *15s.*

POOR LAW SETTLEMENT.—Davey's Poor Law Settlement and Removal.—Second Edition. 1913. *15s.*

POWERS.—Farwell's Concise Treatise on Powers.—Third Edition. By C. J. W. FARWELL and F. K. ARCHER. 1916. *1l. 15s.*

PRIVATE BILLS.—Landers' Procedure and Practice relating to Private Bills in Parliament. 1919. *1l. 12s.*

PRIZE CASES.—Cases Decided in the Prize Court and on Appeal to the Privy Council. *Each Part Net, 7s. 6d.*

PROPERTY.—Strahan's General View of the Law of Property.—Sixth Edition. By J. A. STRAHAN, assisted by J. SINCLAIR BAXTER. 1919. *16s.*

RAILWAYS.—Disney's Law of Carriage by Railway.—Fifth Edition. By H. W. DISNEY. 1921. *Net, 12s. 6d.*

RATING.—Davey's Law of Rating.—With Supplement bringing the Work down to June, 1919. *Net, 1l. 10s.*
* * *The Supplement may be had separately, Net, 5s.*

- RECEIVERS AND MANAGERS.**—Riviere's Law relating to Receivers and Managers.—1912. 9s.
- ROMAN PRAETORS, THE.** 1922. *Net, 5s.*
- SHIPPING.**—Temperley's Merchant Shipping Acts.—Third Edition. 1922. *Net, 2l. 10s.*
- SMALL HOLDINGS.**—Spencer's Small Holdings and Allotments Acts.—Second Edition. 1920. 10s.
- SPECIFIC PERFORMANCE.**—Fry's Treatise on the Specific Performance of Contracts.—Sixth Edition. By GEORGE RUSSELL NORTHCOTE. 1921. 2l. 10s.
"The leading authority on its subject."—*Law Journal.*
- STAMP LAWS.**—Highmore's Stamp Laws.—With Notes of Decided Cases. Fourth Edition. By C. C. GALLAGHER. 1921. *Net, 15s.*
- STATUTES.**—Chitty's Statutes to End of 1920. *Net, 21l.*
Full Particulars on application.
- TORTS.**—Addison's Law of Torts.—Eighth Edition. By W. E. GORDON and W. H. GRIFFITH. 1906. *Net, 1l. 18s.*
- Pollock's Law of Torts.**—Eleventh Edition. By the Rt. Hon. Sir FREDK. POLLOCK, Bart., K.C. 1920. 1l. 12s.
- * * An Analysis of the above for Students.—Third Edition. By J. K. MANNOCH. 1920. 7s. 6d.
- TRADE UNIONS.**—Greenwood's Law relating to Trade Unions.—1911. 10s.
- A SUPPLEMENT to above, including the Trade Union Act, 1913. 1913. *Net, 3s. 6d.*
The two works together, net, 10s.
- TRANSPORT.**—Robertson's Ministry of Transport Act, 1919.—With an Introduction and Notes. 6s.
- TRUSTS AND TRUSTEES.**—Godefroi on the Law of Trusts and Trustees.—Fourth Edition. By SYDNEY E. WILLIAMS. 1915. 1l. 16s.
- WATER.**—O'Hagan's Law of Water in Greater London. 1920. *Net, 1l.*
- WILLS.**—Theobald's Concise Treatise on the Law of Wills.—Seventh Edition. 1908. 2l.
- WORKMEN'S COMPENSATION.**—Knowles' Law relating to Compensation for Injuries to Workmen.—Third Edition. 1912. 1l.
- Workmen's Compensation Reports.**
Annual Subscription, 25s. net (post free).

STEVENS & SONS, Ltd., 119 & 120, Chancery Lane, London.

